

# STATES OF JERSEY



## DRAFT SECURITY INTERESTS (JERSEY) LAW 201-

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**Lodged au Greffe on 31st May 2011  
by the Minister for Economic Development**

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**STATES GREFFE**





Jersey

## **DRAFT SECURITY INTERESTS (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development the provisions of the Draft Security Interests (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator A.J.H. Maclean**

## REPORT

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### 1. INTRODUCTION

- 1.1 This Explanatory Note explains the purpose and main provisions of the draft Security Interests (Jersey) Law 201-. 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. Consequently, it is important that the existing legal framework governing the creation of security interests over intangibles is kept up to date. This Law creates a new regime for taking security by repealing the existing 1983 Law although security interests created under the 1983 Law will remain and continue in force without amendment after entry into force of Part 3 of the new Law.
- 1.2 The draft Law is the product of extensive consultation with interested parties, both through meeting with consultees and receiving written comments.

#### 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.
- 1.4 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 a simplified form the approach adopted throughout the United States and Canada and in New Zealand and, most recently, Australia. In addition, much assistance has been derived from the English Law Commission’s two reports, *Company Security Interests: A Consultative Report*<sup>1</sup> and *Company Security Interests*<sup>2</sup> so far as these relate to intangibles.

#### Principal features

- 1.5 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 hypothec (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.

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<sup>1</sup> Law Com No. 176 (2004)

<sup>2</sup> Law Com No. 296, Cm 6654 (2005)

- 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.
- A range of efficient, easily exercisable default remedies, but with safeguards for the grantor of the security interest.

1.6 After Part 3 of this Law comes into force, no security interest to which the Law applies may be created except under this Law (Article 12). However, a person giving security governed by foreign law over property situated outside Jersey is deemed to have had capacity to give it under Jersey law (Article 13(2)).

### **Structure of the Law**

1.7 Apart from the definitions set out in Article 1, the draft Law covers 8 main areas. Parts 1 to 3 lay down the interpretation and scope of the Law and the conditions for the attachment and perfection of security interests and of assignments of receivables (that is, assignments otherwise than by way of security). Parts 4 and 5 deal with the priority of competing interests in collateral and the protection of purchasers. Part 6 sets out the rights of an assignee of receivables and Part 7 the methods of enforcement of security interests. Part 8 deals with the registration of security interests (including security assignments of receivables) and outright assignments of receivables. Finally, Schedule 1 deals with amendments and repeals, while Schedule 2 contains transitional provisions.

## **2 SCOPE**

### **Transactions covered by the Law**

2.1 The new Law applies to consensual security interests in intangible movable property 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.<sup>3</sup> Outright assignments or re-assignments of other forms of intangible property, such as loan debts, fall outside the Law, as do interests in land, which are subject to a distinctive legal regime. The Law governs only security interests created by agreement (Article 15(1)). Liens and other security interests and assignments taking effect by operation of law and rights of set-off, combination and netting are also outside the scope of the Law (Article 8).

2.2 In principle the Law is confined to transactions with a Jersey connection of a kind set out in Article 4, described in more detail below. However, under Article 5, nothing in the Law precludes the parties from agreeing that in their

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<sup>3</sup> “Assign” means transfer for value otherwise than by way of security. An examination of the provisions specifically referring to the assignment of receivables is set out in Part 6. The rest of this Report is confined to security interests, which include assignments by way of security.

relations with each other the Law is to apply to an agreement relating to intangible movable property, wherever situated, which would be governed by the Law if the agreement was not outside the scope of Article 4. This ability to extend the application of the Law is limited to relations between the parties, typically the rights and obligations created by the security agreement, as opposed to property rights affecting third parties. The same Article empowers the parties to agree that a security interest created under the prior law and continuing in force under the new Law without amendment shall be governed by the new Law.

**“Grantor”; “obligor”; “secured party”**

- 2.3 “Grantor” means the person who grants a security interest. Usually this will be the person owing the obligation secured by the security interest, who is termed the “obligor”, but this is not necessarily the case, as a security interest may be given to secure the obligations not of the grantor but of a third party. The person to whom the security interest is granted is termed the “secured party”, who may hold for his own benefit or for the benefit of another person or for the benefit of both. So a security interest may be taken by a person as trustee for others.

**“Security agreement”; “security interest”**

- 2.4 “Security agreement” means an agreement that creates or makes provision for a security interest, and includes an agreement that varies, renews or extends a security agreement as well as 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 (hypothecs), pledges and contractual liens. Parties are free to adhere to existing terminology in their agreements but for the purposes of the Law the old labels are replaced by the single label “security interest”. The new Law removes the barrier to a hypothec of intangible movable property, a barrier creating a serious obstacle to modern financing, and also makes it clear that a security interest can be taken over after-acquired property. To avoid doubt, Article 6 of the new Law provides that a bank holding a deposit of money and a securities intermediary having an obligation to transfer securities or cash can each take a security interest in its own obligation.
- 2.5 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 new 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.

### **“Intangible movable property”**

- 2.6 Intangible movable property means a documentary intangible or any other movable property that does not consist of goods, money (in the sense of currency) or documents of title to goods (Article 1). Though physical money is excluded, other forms of cash, namely cheques, drafts and deposit accounts, are within the Law.
- 2.7 Intangible movables are of 2 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 (bills of exchange, promissory notes and the like) and negotiable investment securities such as bearer bonds and bearer shares. The second kind comprises all other intangibles (in this Report termed “non-documentary intangibles”) insofar as they are not excluded by Article 8 or Article 9. Into this second category fall all types of investment security, 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. “Investment security” is given a wide meaning, covering most forms of financial collateral, including property held in a securities or commodities account with an intermediary and 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”**

- 2.8 The Law covers not only original collateral but “proceeds” (Articles 16, 24(b)). Proceeds are any identifiable or traceable property in which the grantor of a security interest acquires an interest and which derives 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 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 grantor 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 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 grantor. It is, however, open to the parties to give security over these items as original collateral.

### **Classification of collateral**

- 2.9 As pointed out above, the primary classification divides collateral into (A) documentary intangibles and (B) non-documentary intangibles. The reason for this is that only documentary intangibles lend themselves to

attachment and perfection by possession and have a physical location for the purpose of determining their situation under Article 4(1)(a)(i).

**(A) Documentary Intangibles**

2.10 Documentary intangibles are themselves of 2 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 Law affects the rights of a holder in due course (Article 37).

**(B) Non-Documentary Intangibles**

2.11 Non-documentary intangibles are divided by the Law into 3 broad categories, intangibles governed by the rules on control, receivables and other intangibles.

**(1) *Intangibles governed by the rules on control***

2.12 Article 3 deals with the concept of control, discussed below in paragraphs 2.23 *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 with an intermediary*, which are for the most part treated by the Law in the same way as it treats deposit accounts. The method of perfection by control is in essence the same (Article 3(3) and (4)), as are the priority rules (Article 30). However, a security interest in securities accounts cannot be perfected by assignment and notice of assignment to the intermediary. In this respect the perfection rules differ from those applicable to deposit accounts. 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. It is open to the parties, however, to create a security interest in particular securities within the account. In neither case does the secured party acquire rights direct against the issuer or a higher-tier intermediary; its rights can be asserted only against the intermediary with which it has a control agreement and its security interest is limited to a proportionate interest (with other account holders having interests in the same class of securities) in whatever securities credited to the securities account are held by the intermediary. 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) and (6)).

**(2) *Receivables***

2.13 The primary reason for isolating receivables as a distinct category is that the perfection and priority rules of the 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. Specifically excluded are loans, deposit accounts and rights to payment embodied in an instrument or an investment security. Loan participations also fall outside the definition.



2.14 There are 3 reasons for treating receivables as a distinct category. Firstly, they are not susceptible to control in the sense used in Article 3 of the Law and therefore must be treated separately from deposit accounts, securities accounts and investment securities. Secondly, for the reasons given in paragraph 6.3, the perfection and priority rules of the 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 39 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.

**(3) *Other intangibles***

2.15 This category embraces all other non-documentary intangibles not excluded by Article 8 or Article 9. Into this residual category fall rights to repayment under loan agreements, loan participations and other contract rights. Security interests in these can be perfected only by registration and fall outside Part 6 dealing with assignments of receivables.

**Territorial scope**

2.16 Article 4 describes the territorial scope of the Law. The key idea is to confine the Law to intangible movable property situated in Jersey. This is straightforward for documentary intangibles, the *situs* of which is the location of the negotiable instrument or negotiable investment security at the time of making of the security agreement. However, considerable difficulties can arise from ascribing an artificial *situs* to non-documentary intangibles. Accordingly Article 4 does not seek to do this but in the interests of greater certainty selects a more appropriate link to Jersey. So the Law applies to a security interest in –

- (1) directly held non-negotiable investment securities listed on a register maintained in Jersey or by a Jersey company or by a Jersey individual;
- (2) investment securities held through an account with an intermediary where the account is maintained in Jersey;
- (3) deposit accounts maintained in Jersey; and
- (4) any other intangibles (for example, receivables or ordinary contract rights) where the account debtor or other person owing the obligation is a Jersey company or a Jersey individual.

**Choice of law to govern intangible property situated outside Jersey**

2.17 Article 5 allows the parties to a security agreement over intangible property to apply the Law, in their relations with each other, to a security interest which falls outside Article 4 but would otherwise be within the Law. This gives the parties the ability to enjoy the advantages of the Law for a security interest over foreign intangible movables, for example, without there being the requisite connection to Jersey, though only in their relations with each other, so that the rights of third parties are not affected.

## Impact on security interest created under a foreign law

- 2.18 The starting point is that, despite Article 4, this 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, and Article 13 makes it clear that a Jersey company or individual is deemed to have capacity to give security governed by foreign law over assets situated outside Jersey. 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 28(2)), after which it will become unperfected if not perfected under this Law. If perfected under this Law within the 30 day period it will be treated as perfected as from the time it was perfected under the foreign 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 this Law.
- 2.19 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 9.1). As stated earlier, a Jersey grantor giving security over property situated outside Jersey is deemed to have had capacity to give it under the law of Jersey (Article 13(2)). This re-enacts Article 12 of the Security Interests (Jersey) Law 1983.
- 2.20 Once the property in respect of which rights have been created under foreign law moves to Jersey it attracts all the incidents of the new Law, so that, for example, as previously stated a security interest created under English law as a floating charge becomes recharacterised as a fixed security interest under the Law.
- 2.21 In other words, the fact that a security interest created under English law is expressed as a floating charge does not by itself postpone attachment in the absence of agreement to that effect. Despite this the grantor is entitled to deal in the collateral from time to time if that is in accordance with the security agreement. Such a dealing is not incompatible with a fixed security interest for the purpose of the Law.

## Aspects of security

- 2.22 The draft Law deals with the attachment, perfection and priority of security interests, together with enforcement rights and the registration system. *Attachment* denotes the creation of a security interest so as to be enforceable against a grantor and a restricted category of third parties (see paragraph 3.1). *Perfection* denotes the further step required to give the security interest protection against other (most) 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 of a negotiable instrument or certificate embodying a negotiable investment security or registration in a public register or which gives the secured creditor control over the intangible (see paragraph 2.23). Perfection, though necessary to preserve *priority*, does not

guarantee priority, which is determined by priority rules dealing with the ranking of competing interests.

### **The concept of control**

2.23 An important feature of the new Law is the concept of *control* of collateral. This provides in relation to non-documentary 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 22(3)), 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 grantor.

### **When a secured party has control**

2.24 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 non-documentary 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 2.25. 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), “writing” being defined by Article 1.

### ***Deposit account***

2.25 Article 3 provides 4 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 grantor and the bank or other institution with which the deposit is held. This is a novation and is the strongest form of control, giving the secured party the protection against third party claims provided by Article 38. The second is where the 3 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 grantor 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 grantor 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*

- 2.26 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. This is because the secured party does not have the same ability to deal with the account as a secured party who holds the intermediary's agreement to act on that party's instructions. The intermediary may, for example, be unclear as to its duty on receiving a notice of assignment and it may have stipulated that it will not accept a notice of assignment. Moreover, an assignee takes subject to defences and, within limits, to rights of set-off, so again is in a weaker position than one who has control of the account by agreement of the intermediary. For the same reasons, a security interest in a securities account cannot be perfected by assignment and notice of assignment. Control can be taken over the securities account as such, thus covering all securities from time to time credited to the account, or over specific securities within the account.

### *Certificated registered investment security*

- 2.27 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 grantor 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*

- 2.28 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 4 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 grantor (Article 17). However, where the security interest has attached it is enforceable not only against the grantor but against third parties except so far as the Law otherwise provides (Article 15(3)). In most cases a security interest will be unenforceable against third parties unless it has not only attached but been perfected as described below. But there are cases in which even an unperfected security interest is

enforceable against third parties. In particular, an unperfected security interest has priority over –

- (a) a subsequent unperfected security interest (Article 29(1)g),
- (b) a subordinated interest (Article 32) and
- (c) the interest of an acquirer for value who was a party to the transaction creating or providing for the security interest (Article 35).

3.2 There are 3 requirements for attachment –

- (a) the secured party must have furnished value;
- (b) the grantor must have rights in the collateral, though not necessarily full ownership; and
- (c) 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 grantor and contain a description of the collateral sufficient to identify it (Article 18(1)(c)(ii)).

The word “value” has been used as a neutral term to avoid the complexities associated with both *cause* (civil law) and consideration (common law). It is worth noting that value includes an antecedent debt or liability, and that “Writing” and “signed” are defined to include electronic documents and signatures. Where the secured party has possession there is no need for the security agreement to be in writing. Possession is, of course, possible only in the case of documentary intangibles, that is, negotiable instruments and negotiable securities. Where the secured party has control, this presupposes that (except where the collateral consists of securities held with an intermediary or a bank deposit account and the security interest is in favour of the intermediary or bank itself) there is a written agreement of some kind, though the writing need not be a signed writing and the agreement is not necessarily the security agreement. If, however, the secured creditor does not have either possession or control it is necessary that the grantor shall have signed a security agreement containing a description of the collateral sufficient to identify it (Article 18(1)(c)(ii)).

3.3 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 grantor’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)). 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 grantor’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 (Article 20(1)). 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 (Article 3(4)(c)), and its attached interest is automatically perfected at the same time (see Article 22(2)).

### **Perfection of the security interest**

- 3.5 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 grantor'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 they are a party to the transaction creating or providing for it; and a security interest not perfected before the commencement of the grantor's bankruptcy is void against the Viscount or a liquidator, or an administrator appointed by the court (Article 59(1)).
- 3.6 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 8.3 as to financing statements) unless the security interest is in investment securities and has attached automatically under Article 20, in which case it is automatically perfected. 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. Since a security interest perfected by possession or control has priority over one perfected by registration, the latter form of perfection is of limited value and will typically be of use only where the documentary intangible forms part of an omnibus security over present and future assets rather than being specifically identified as the subject of the security interest. "Securities account" covers any account with an intermediary to which financial assets may be credited or debited, including a commodity futures account, and includes particular securities within the account. A security interest in, or an assignment of, receivables requires to be perfected by registration (Article 22(3)), there being no other specified mode of perfection. Notice to the account debtor does not suffice. The same is true of a security interest in a securities account (see paragraph 2.26), which must be perfected either by control or by registration, though the latter is neither required nor available in cases of automatic perfection under Article 20.
- 3.7 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") or (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.
- 3.8 Where a security interest perfected in one way is later perfected in another way without an interval the security interest is continuously perfected (Article 23).
- 3.9 The steps to perfection can be taken in any order (Article 21(2)), 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 grantor enjoy a period of temporary automatic perfection (Articles 26 and 27), on the expiry of which they need to be perfected in the ordinary way.

- 3.10 Article 28 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 is perfected within 30 days it is treated as perfected as from the time of perfection under the law of the other jurisdiction (Article 28(2)(c)), otherwise it is perfected under this Law only when the necessary perfection steps have been taken. If the security interest had not been perfected under the foreign law it may be perfected under this Law and its perfection starts from that time (Article 28(3)).

#### **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 residual priority rules, applicable where none of the specific rules which follow applies. These residual rules 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) a financing statement was registered;
  - (b) the secured party took possession or control of the collateral; or
- the security interest was temporarily perfected under the Law.
- 4.2 It should be noted that, as between 2 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 grantor 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. Thus, 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. However, investment securities and deposit accounts are governed by different rules.

## **Special priority rules**

### ***Investment securities and deposit accounts***

- 4.3 Under the special priority rules embodied in Article 30, the priority of conflicting security interests in the same certificated investment security, the same securities account or the same deposit account is determined by possession or control and, as between two interests perfected by control, by the order of control. So if a securities account held in the name of A is given in security successively to B and C while still held in A's name, priority as between B and C is determined by who has control and, if both have control, by the order of control. But if C arranges for the transfer of securities from A's account to C's account, this is not the same account as that held by A in which B has a security interest. Accordingly this case is governed not by Article 30 but by Article 38, which gives C an overriding title unless he knew that the disposition to him was in breach of the security agreement between A and B (see paragraph 5.5).
- 4.4 Possession is, of course, restricted to negotiable investment securities, and only one party, or parties jointly, can hold possession at any one time. The special priority rules do not themselves cover negotiable instruments held by way of security; instead, protection is given under the law applicable to negotiable instruments to a holder in due course (Article 37), which includes a pledgee who satisfies the requirements of such a holder.
- 4.5 It may occasionally happen that in the case of investments held with an intermediary, separate agreements are entered into by the intermediary with different secured parties to act in accordance with their instructions in relation to the same securities held for the same grantor, in which case priority is governed by the order in which the agreements were made. Conflicting security interests granted by an intermediary where neither party has control rank equally. In all other cases the residual rules apply.

### ***Purchase-money security interests***

- 4.6 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 repayment of an advance of the purchase price of the collateral to the grantor, together with interest and credit charges. 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 grantor'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 not later than 30 days after attachment (Article 34).

### **Subordination agreements**

- 4.7 Priorities may be varied by a subordination agreement between the holders of the competing interests (Article 32). The subordination may be contained in the security agreement or any other agreement. But to protect a transferee of the subordinated security interest from being led into thinking that it is still the senior security interest it is necessary to put the transferee on notice of the subordination in some way in order for him to be bound by it. Article 32(3) provides three means by which notice may be given. The first is registering a financing change statement (if the security interest was registered) or a



financing statement (if it was not registered). The second is where the transferee was itself a party to the subordination agreement. The third is where the agreement transferring the security interest provides that the transferee is to be bound by the subordination agreement.

#### **Priority where security interest transferred**

- 4.8 A security interest that is transferred has the same priority as it had immediately before the transfer (Article 31(1)). In other words, the transferee steps into the shoes of the transferor. There is, however, one qualification. The transferee of a subordinated security interest is not bound by the subordination except in the cases mentioned in Article 32(3) (see paragraph 4.7).

#### **Registration of transfer; priority where more than one transfer**

- 4.9 Transfer of a security interest perfected by registration may be registered by filing a financing change statement (Article 69(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 70(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, as stated above, a security interest that is transferred has the same priority as it had before transfer. To this extent registration of a transfer is permissive, its main purpose being to ensure that any notices which the Law requires to be given to the secured party are given to the transferee. However, unless the transferee acquires possession or control, registration is necessary if the transferee is to preserve its priority against a subsequent transferee, for as between successive transferees of the same security interest (neither of whom has possession or control) priority goes to the first to register a financing statement or a financing change statement (Article 31(2)(b)). The reason for this rule is that if the first transferee does not have possession or control and does not register the transfer, the second transferee may have no way of knowing that its transferor is no longer the owner of the security interest. The position is otherwise where one of the transferees has possession or control. Such a transferee has priority even over a transferee already on the register (Article 31(2)(a)).

#### **Future advances**

- 4.10 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 PERSONS TAKING FREE OF SECURITY INTEREST**

- 5.1 The priority rules previously discussed deal with competing security interests in the same security. Part 5 of the Law includes some parties whose interests do not only rank in priority to an earlier security interest but extinguish it altogether.

### **Freedom from unperfected security interest**

- 5.2 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 35).

### **Protection of creditor receiving payment**

- 5.3 A creditor receiving payment through an obligor-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, whether or not the creditor knew of the security interest, unless acting in collusion with the grantor to defeat the rights of the holder of the security interest (Article 36). An obligor-initiated payment is a payment made by the obligor through a negotiable instrument, an electronic funds transfer or a debit, a transfer order, an authorization, or a similar written payment mechanism executed by the obligor when the payment was made. The purpose of this rule is to ensure the efficacy of payment arrangements.

### **Preservation of rights of holder in due course**

- 5.4 The rights of a holder in due course of a negotiable instrument are preserved (Article 37). Under the applicable negotiable instruments law such a holder takes free from any defect in the title of his transferor and thus from any security interest given over the instrument and perfected by registration.

### **Protection of purchaser of investment security**

- 5.5 A person giving value for a certificated investment security and taking possession of the certificate takes free even of a perfected security interest of which he knows unless he also knows that the disposition to him was in breach of the security agreement. In the case of an investment security held with an intermediary where Article 30 does not apply, a person giving value for an investment security transferred to an account in his own name likewise takes free even of a perfected security interest in favour of another party of which that person knows unless he also knows that the disposition to him was in breach of the security agreement. The key element here is transfer to a new account. A competition between security interests in a securities account given successively to 2 creditors who leave the account in the grantor's name is governed by Article 30. By contrast the transfer of securities to a new account in the name of one such creditor has the effect that the transferee's account constitutes different collateral, taking the case outside Article 30 and giving the transferee the protection of Article 38. The rationale of this "protected purchaser" rule is the importance of avoiding impediments to the ready transferability of investment securities which are certificated or held with an intermediary.

## **6 ASSIGNMENTS OF RECEIVABLES**

### **Sphere of application**

- 6.1 The Law applies to an assignment of a receivable payable by a Jersey company or a Jersey individual (Article 4(b)), other than an assignment excluded by Article 9(d), (f), (g) or (h) (see paragraph 2.21). By "assignment" is meant a sale or other transfer for value otherwise than by way of security, in other words, an outright assignment. An assignment by way of security is

dealt with simply as a particular form of security interest created by agreement, and is therefore governed by the rules already described. Receivables are narrowly defined (see Article 1 and paragraph 2.13) 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 Law at all.

- 6.2 Whilst most of the provisions of the Law are confined to the grant of security interests, including the assignment of receivables by way of security, the Law also provides that an outright assignment of receivables may be perfected by registration (Article 21(3)) and deals with priorities as between competing outright assignments and between an outright assignment and a security interest (Article 29).<sup>4</sup> There are 3 reasons for this. First, 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 seller does not wish to have its relations 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 such as factoring and block discounting.
- 6.3 The Law does not deal with the formalities for an outright assignment of receivables and thus does not include any equivalent of attachment for these except to provide a rule in relation to after-acquired property (Article 19(3)). That is left to the general law. The Law is confined to questions of perfection and priority, the effect of restrictions on assignment, the duty of the debtor to the assignee and the defences and rights of set-off the debtor can assert against the assignee. Part 7, dealing with the enforcement of security interests, does not apply to outright assignments, since the question of default by the assignor does not arise. Moreover, 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 Law as to surplus and its distribution do not apply.

### **Perfection of assignment**

- 6.4 Registration provides the sole method of perfecting an outright assignment of a receivable (Article 21(3)). It is, however, simple and convenient. 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. Article 23, dealing with continuous perfection of security interests perfected in more than one way, therefore has no application to outright assignments of receivables.

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<sup>4</sup> Except in Articles 39 and 41 of the Law, “assignment”, as defined by Article 1, means an outright assignment. An assignment by way of security is encompassed by the phrase “security interest.”

## **Priorities**

- 6.5 The priority rules governing outright assignments of receivables fall within the residual priority rules contained in Article 29. 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 (Article 29(1)(b)). Conversely a perfected security interest in a receivable has priority over an unperfected assignment of the same receivable (Article 29(1)(c)). Where there are two or more perfected assignments, priority generally goes according to the order of registration of the financing statement (Article 29(1)(e)). This is not necessarily the same as the order of perfection, because a financing statement registered prior to the assignment gives priority to the assignment when concluded over an intervening assignment in favour of another creditor (see paragraph 4.2). The same rule applies to a competition between a perfected assignment and a perfected security interest (Article 29(1)(f)). Priority among unperfected assignments of the same receivable is governed by the order in which the assignments occurred (Article 29(1)(h)), while priority between an unperfected assignment and an unperfected security interest is determined by whichever of the assignment and the attachment of the security interest first occurred (Article 29(1)(i)).

## **Overriding of restrictions on assignment**

- 6.6 Part 6 of the Law deals with the assignment of receivables, Articles 39 and 41 of which (but not Article 40) apply not only to outright assignments but to assignments by way of security, which would ordinarily fall outside the definition of assignment used in the Law. The effect of Article 39 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 39 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**

- 6.7 Article 40, 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 and is thus controlled by the default provisions relating to security interests generally and contained in Article 43(2).
- 6.8 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 notice is required for 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 40(1).

### **Defences and rights of set-off**

- 6.9 Under Article 41 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.

## **7 ENFORCEMENT OF SECURITY INTERESTS**

### **Default remedies generally**

- 7.1 Under the 1983 Act the creditor's only remedy for default is sale. Part 7 of the new 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), for example, the obligor's insolvency. The primary remedies are appropriation and sale of the collateral (Article 43(2)(a) and (b)). These are buttressed by various ancillary remedies (Article 43(2)(c)). Remedies may be exercised cumulatively to the extent that they are not in conflict (Article 43(3)).

### **Appropriation**

- 7.2 On default the secured party may appropriate the collateral or proceeds, that is, apply the collateral or proceeds *in specie* in or towards satisfaction of the secured obligations. The effect is that ownership of the appropriated collateral or proceeds vests in the secured party free from junior security interests (Article 47). The secured party is, however, under a duty to give not less than 14 days' prior notice to interested persons (Article 44(1)) and take all commercially reasonable steps to determine the fair market value of the collateral and act in other respects in a commercially reasonable manner in relation to the appropriation (Article 46(1)). This is relevant for the purpose of determining whether the net value of what is appropriated leaves a deficiency recoverable from the grantor or a surplus payable by the secured party as provided by Article 49. "Net value" means the value of the collateral minus the secured party's reasonable costs of and incidental to the appropriation, for example, the cost of having the collateral valued (Article 51(2)).

## **Sale**

7.3 A secured party may sell by auction, public tender, private sale or another method. Prior notice to interested parties is required (Article 44(2)) but is not required where the collateral consists of a quoted investment security or in other cases within Article 44(3) and can be dispensed with by agreement in writing between interested parties (Article 44(4)). A secured party must take all commercially reasonable steps to obtain fair market value for the collateral at the time of sale, to act in other respects in a commercially reasonable manner in relation to the sale and enter into any agreement in relation to the sale on commercially reasonable terms (Article 46(2)). The secured party's entry into an agreement for sale, or any other irrevocable act in relation to the collateral, extinguishes the grantor's right to redeem the collateral (Article 53(1)) and also extinguishes junior security interests (Article 47).

## **Distribution of surplus**

7.4 Any surplus (as determined by Article 51) resulting from appropriation or sale is payable, first, to junior secured parties who have registered a financing statement, then to any other person (other than the grantor) who has given the secured party notice of an interest in the collateral and, finally, the grantor (Article 49(1)). Alternatively the surplus may be paid into court (Article 50).

## **Ancillary remedies**

7.5 The primary are buttressed by various ancillary remedies exercisable in relation to the collateral or its proceeds (Article 43(2)(c)). These are the following:

- (1) Taking control or possession of the collateral or proceeds;
- (2) Exercising any rights of the grantor in relation to the collateral or proceeds, for example, the grantor's right to vote as a shareholder of investment securities given as collateral;
- (3) Instructing any person who has an obligation in relation to the collateral or proceeds to carry out the obligation for the benefit of the secured party, for example, payment to the secured party instead of the grantor of dividends received on the grantor's behalf by a bank or other intermediary in respect of investment securities given as collateral;
- (4) Finally, by Article 52 the court is given extensive powers to make orders to facilitate exercise of the secured party's remedies, including orders for the delivery or transfer of title of collateral.

## **Grantor's right to redeem**

7.6 The grantor can redeem the collateral at any time before appropriation or entry by the secured party into a contract of sale or other irrevocable step in relation to the collateral (see paragraphs 7.2 – 7.3). The grantor also has a qualified right to reinstate the security agreement.

## **8 REGISTRATION**

### **Nature and contents of the register**

- 8.1. The register will be a public register searchable online (see paragraph 8.2). It will contain financing statements, financing change statements and such other matter as is required by the Law to be entered or registered (Article 62).

### **The registration system**

- 8.2 The registration system will be wholly automated, so that registrations may be effected, searches made and search certificates issued online without the need for human intervention at the Registry end (Article 79). 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**

- 8.3 The registration system will be based on the concept of notice-filing as opposed to transaction-filing. Notice-filing has 3 advantages.

- (1) 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 secured party or intending secured party 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. Online 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 party or the grantor. If the security interest is not over all the intangible movable property, or all the movable property, of the grantor, the secured party can be required by the grantor, 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 85).
- (2) A financing statement can be registered before or after the making of the security agreement (Article 63(1)), and when all the elements of perfection are in place priority goes back to the date of registration of the financing statement (see Article 29(1)(d)(i)).
- (3) It is not necessary to make a separate registration for each transaction. The financing statement can cover all transactions, present and future, relating to a given description of collateral.

## **Assignments, transfers and subordinations**

- 8.4 Assignments of receivables, whether absolute or by way of security, will also fall within the registration system,<sup>5</sup> 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, unless it was a party to the subordination agreement or the agreement transferring the security interest provides otherwise (Article 32(3)).

## **Other aspects of registration**

- 8.5 The registration data, and thus the contents of the financing statement or financing change statement, will be such, and in such form, as may be prescribed by the Minister by Order or in the absence of any such Order, or to the extent that it is silent on any matter, such details as the registrar may reasonably require or permit (Article 62). A discharge or amendment of a registration can be recorded by registering a financing change statement (Article 74(1)) and the grantor 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 75. 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 83). 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 84).

## **Errors**

- 8.6 Under Article 66(1) an omission, error or irregularity in a registration will not invalidate the registration unless the omission, error or irregularity is seriously misleading. However, this is an objective test; it is not necessary to prove that anyone has actually been misled (Article 66(3)).

## **Duration of registration**

- 8.7 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 (Article 67). But registration may be renewed by registering a financing change statement at any time while the earlier registration is effective (Article 68).

## **Registration not constructive notice**

- 8.8 Article 14(1) 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 14 also provides that any priority a creditor acquires by

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<sup>5</sup> In the registration provisions an assignment by way of security is not referred to as such but is covered by the phrase “security interest.”



perfection of a security interest or an outright assignment of a receivable applies even if the creditor had actual knowledge of a prior security 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.

## **9 EFFECT OF GRANTOR'S BANKRUPTCY**

### **Protection of perfected security interest**

- 9.1 In general, only a security interest, or an assignment of a receivable, remaining unperfected at the time of the grantor's bankruptcy is void against the Viscount or a liquidator and creditors (Article 59). A perfected security interest or assignment is normally unaffected by the grantor'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 grantor and others hold an undivided share remains in force. Nothing else in that Law affects the operation of this Law (Article 57(1)).
- 9.2 The repeal of the Security Interests (Jersey) Law 1983 except as to agreements governed by prior law 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 7 of this 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 7, though the Court may on the application of the secured party make any of the orders specified in Article 52 for the purpose of facilitating realisation of the collateral.

## **10 COMMENCEMENT, REPEAL AND TRANSITIONAL PROVISIONS**

### **Commencement**

- 10.1 The Law comes into force on such day or days as the States may by Act appoint (Article 96(2)). Different days may be appointed for different Parts or Articles of the Law. Regulations may be made of a saving or transitional nature and these may amend Schedule 2.

### **Repeal and amendments**

- 10.2 The Law repeals the Security Interests (Jersey) Law 1983 in its entirety except as regards unamended continuing security interests (see paragraphs 10.3 – 10.4). The 1983 Law is itself amended so as to be limited to cases which under Schedule 2 to the new Law are to be governed by prior law (Schedule 1, paragraph 1). There are also amendments to the Bankruptcy (Désastre) (Jersey) Law 1990 so as to remove restrictions on the exercise of default remedies by a secured creditor after the grantor has become bankrupt. This reflects the fact that to the extent of the security interest the collateral does not form part of the grantor's estate.

### **Application to security interests created prior to the Law**

- 10.3 In general the Law does not apply to continuing security interests, that is, security interests –

- (a) created in accordance with the 1983 Law on or after 5 April 1983 and before Part 3 of the new Law comes into force, and
- (b) still in force when Part 3 comes into force (Schedule 2, paragraph 1).

These continuing interests remain governed by prior law, including in particular the 1983 Law (Schedule 2, paragraph 2). To this general rule there are 2 exceptions. First, it is open to the parties to agree that, in their relations with each other, the new Law will apply to a continuing security interest, though perfection and priorities will remain governed by the prior law. Secondly, a continuing security interest to which the prior law applies will be governed by the new Law, not by the prior Law, where it is amended after Part 3 comes into force so as to secure previously unsecured obligations, alter the terms on which an obligation is secured, extend or reduce the duration of the security interest or add to or modify the collateral to which the security interest relates (Schedule 2, paragraphs 1, 2 and 4(1)). A security interest so amended is thus treated as a new security interest.

### **Priority of unamended security interests to which prior law applies**

10.4 An unamended continuing security interest, to which the prior law applies, has priority over any security interest created by the new Law unless the holder of the earlier security interest otherwise agrees (Schedule 2, paragraph 3(1)). It had at one time been envisaged that holders of continuing security interests would be required to re-perfect such interests within a given time after the coming into force of the new Law, but this requirement has been dropped following representations as to the severe practical difficulties involved in identifying existing security interests which might have been created many years before. Similarly, an unamended continuing security interest in a receivable has priority over an outright assignment of the same receivable perfected under the new Law unless the holder of the security interest otherwise agrees (Schedule 2, paragraph 3(2)). However, a different rule applies if the earlier interest was not a security interest in a receivable but an outright assignment (see paragraph 10.7).

### **Deemed perfection of amended continuing security interest**

10.5 Where a continuing security interest is amended after Part 3 of the Law has come into force, so that it becomes governed by the new Law instead of by the prior law, and the continuing security interest had been perfected by possession or control in such a way as would constitute perfection under the new Law, it shall be taken to be perfected under the new Law as from the time of amendment of the security interest without the need to take any further perfection steps (Schedule 2, paragraph 4(2)). This provision has been inserted solely for the removal of doubt. However, the deemed perfection is not retrospective, and operates for priority purposes only from the time of amendment of the security interest, reflecting the principle that the amendment is treated as creating a new security interest.

### **Priority of amended continuing security interest**

10.6 An amended continuing security interest will be subordinate to an unamended continuing security interest (see paragraph 10.4) but in other respects its priority will be determined by the priority rules set down in Part 4 of the Law as if it were a new security interest created on the day it was amended.

## **Outright assignments of receivables made before new Law**

10.7 Paragraph 5 of Schedule 2 deals with outright assignments made before the coming into force of Part 6 of the Law. For a time these will continue to be governed by the prior Law. However, the policy reason for not requiring prior security interests to be re-perfected under the Law does not apply to outright assignments of receivables, which typically arise from a continuing relationship between assignor and assignee, so that there is unlikely to be any difficulty in identifying for them. For this reason, paragraph 5 provides a transitional period commencing when Part 8 (Registration) comes into force and ending when Part 6 (Assignments of receivables) comes into force during or after which such an assignment may be registered in order to secure its priority against a new-Law security interest or assignment. The registration takes effect on entry into force of Part 6 or on actual registration, whichever is the later (Schedule 2, paragraph 5(4)).

## **Priorities involving prior assignees**

### ***Prior assignee versus new-Law assignee***

10.8 An assignee who does not take advantage of the transitional registration facility and fails to register its assignment or delays registration will be subordinated to an assignee under a new-Law assignment who registers or registers first (Schedule 2, paragraph 5(6)).

### ***Prior assignee versus another prior assignee***

10.9 By contrast, priority as between 2 or more prior assignments (i.e. those made under the prior Law) will continue to be determined by the prior Law even if one or more of the assignments has been registered (Schedule 2, paragraph 5(6)(a)).

## **Priorities as between prior assignee of receivables and security interest**

### ***Prior assignee versus prior unamended continuing security interest***

10.10 Priority as between a prior assignee of receivables and a prior unamended security interest in those receivables remains governed by the prior Law (Schedule 2, paragraph 5(1)).

### ***Prior assignee versus perfected new-Law security interest***

10.11 A perfected security interest created over receivables under the new Law has priority over a prior assignment of those receivables not perfected at the time the security interest is perfected. It is therefore important for the assignee under the prior assignment to take advantage of the transitional provisions by registering the assignment. Since the security interest can likewise only have been perfected by registration (see paragraph 3.6), priority as between a perfected security interest and a perfected assignment is determined by the order of registration.

### ***Prior assignee versus amended continuing security interest***

10.12 Where a continuing security interest over receivables is amended, it is deemed to be created under the new Law (Schedule 2, paragraph 4(1)), so that priority as between the secured creditor and a prior assignee of the receivables under

an outright assignment is governed by the new Law and is therefore determined by the order of registration.

## **FINANCIAL AND MANPOWER IMPLICATIONS**

- 11.1 There are no financial or manpower implications for the States save for the associated costs of developing a modern security interests register. This work is being carried out by the Jersey Financial Services Commission on behalf of the Economic Development Department and is expected to cost in the region of £150,000. The annual costs of running the register will be met through an appropriate fee mechanism.
- 11.2 Any costs of the Royal Court associated with dealing with any applications made under the Law will be off-set by the charging of court fees.

## **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 27th May 2011 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Security Interests (Jersey) Law 201- are compatible with the Convention Rights.

## Explanatory Note

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The object of this Law is to replace the Security Interests (Jersey) Law 1983 with a new set of provisions relating to security interests in intangible movable property.

### *Part 1 – Interpretation*

*Article 1* sets out a number of definitions applying to the Law, including the terms –

- security interest (something that secures a debt or other obligation – for example, something in the nature of a charge)
- assign (transfer a receivable otherwise than by way of security)
- collateral (intangible movable property over which security is taken and which may be taken or sold in case of default on the part of the obligor)
- grantor (the party who grants a security interest over collateral over which the party has rights)
- obligor (the party whose obligation (e.g. to pay a debt) is secured and, in the simplest case, the same party as the grantor)
- secured party (in the simplest case, the party that has given credit and has security to guarantee repayment)
- attachment (making a security interest enforceable)
- perfection (in the case of a security interest, the registration of the security interest or the possession or control of the collateral; and, in the case of an assignment, the registration of the assignment)
- financing statement and financing change statement (explained in the note on Article 61 below).

*Article 2* makes it clear that a reference to a grantor, obligor or secured party in the Law includes their successors and assigns.

*Article 3* elaborates the meaning of “control” in relation to collateral.

### *Part 2 – Scope of Law*

*Article 4* specifies that the Law applies to –

- (a) a security interest in intangible movable property where the interest is created after the relevant Parts of the Law come into force and has a nexus with Jersey; and
- (b) an assignment of a receivable where the assignment occurs after the relevant Parts of the Law come into force and has a nexus with Jersey.

Nevertheless, *Article 5* allows parties to a security agreement, even in cases where a nexus with Jersey is missing, to agree to apply the Law to the agreement – as long as the agreement is essentially for a security interest in intangible movable property.

*Article 6* makes it clear that a bank or intermediary may take a security interest in its own obligation.

*Article 7* makes it clear that a security interest may exist where the secured party (instead of the grantor) holds title to collateral.

*Article 8* provides that the Law does not apply to certain interests.

*Article 9* provides that the Law does not apply to interests created by certain transactions.

*Article 10* makes it clear that, for the purposes of the Law, a subordination agreement does not automatically create a security interest.

*Article 11* provides that the rule *donner et retenir ne vaut* does not affect a security interest.

*Article 12* provides that the type of security interest that is within the ambit of the Law can in future only be created in accordance with the Law.

*Article 13* makes it clear that a person with a nexus to Jersey has, according to Jersey law, since 5th April 1983 always had capacity to give security over foreign property in accordance with foreign law.

*Article 14* makes it clear that registration under the Law does not constitute constructive notice, but perfection by registration (or otherwise) negates the effect of actual notice on priority in certain cases.

### *Part 3 – Attachment and perfection*

*Article 15* requires a security interest to be created by agreement and specifies the effect of the agreement and how it is extinguished.

*Article 16* provides that in general a security interest in proceeds (which result for example from the sale of collateral) may be enforceable as against third parties even if the security agreement does not contain a description of the proceeds.

*Article 17* provides that attachment results in the enforceability of a security interest against its grantor and with respect to collateral.

*Article 18* specifies how attachment is effected.

*Article 19* provides that collateral may include property acquired after a security agreement is entered into. *Article 19* also makes provision for assignments of future receivables.

*Article 20* provides for an intermediary's security interest in investment securities.

*Articles 21* and *22* specify that perfection is by registration, possession or control (in the case of a security interest) or registration (in the case of an assignment).

*Article 23* allows perfection to continue without a break when there is a seamless change in the method of perfection.

*Article 24* provides that when collateral is disposed of, the security interest continues in the collateral (when the disposal is without the authority of the secured party) and in general extends to the proceeds.

*Article 25* provides for continuity of perfection in relation to proceeds when perfection is by registration and the terms of registration are sufficiently wide to cover the proceeds.

In a case where Article 25 does not apply, *Article 26* provides for temporary perfection of a security interest in proceeds (for 30 days) after the security interest attached to the proceeds.

*Article 27* provides for temporary perfection (for 30 days) of a security interest in a negotiable instrument, or an investment security, that is returned to the grantor for one or more of various reasons.

*Article 28* provides for temporary, then permanent, perfection under this Law of a perfected foreign security interest when collateral is moved from outside Jersey to Jersey. Article 28 also provides for perfection under this Law of a foreign security interest that was not already perfected when the collateral was moved to Jersey.

#### *Part 4 – Priority in general*

*Article 29* sets out general rules to determine priority among competing security interests, among competing assignments, and between competing security interests and assignments. In general, priority is determined by the fact of perfection and the order of perfection.

*Article 30* sets out rules to determine priority among competing security interests in investment securities represented by certificates, securities accounts and deposit accounts.

*Article 31* sets out rules to determine priority when security interests are transferred.

*Article 32* makes it clear that a secured party may voluntarily subordinate a security interest, and deals with transfers of subordinated security interests.

*Article 33* deals with priorities where future advances are secured by a security interest.

*Article 34* confers priority on a security interest that is a purchase money security interest.

#### *Part 5 – Taking free*

*Article 35* provides that a person who acquires collateral takes it free of any unperfected security interest in it, unless the person was party to the creation of that security interest or to a transaction relating to it.

*Article 36* provides that a creditor takes payment of a debt free of any security interest in the means of payment unless the creditor acts collusively.

*Article 37* maintains the existing law on holders in due course of negotiable instruments.

Under *Article 38*, a purchaser of an investment security takes it free of any security interest in a case where the purchaser, when entering the agreement for the purchase, did not know that the disposition would be in breach of the relevant security agreement.

#### *Part 6 – Assignments of receivables*

*Article 39* provides that a contractual restriction on assignment does not prevent assignment, though it can make the assignor liable in damages.

Under *Article 40*, the account debtor can continue making debt repayments to the assignor of an account receivable, if the account debtor has not been given information about the assignment.

*Article 41* provides that (in general) the rights of an assignee are subject to defences to the assigned claim, and to rights of set-off, being defences or rights that the account debtor could have asserted against the assignor.

#### *Part 7 – Enforcement of security interests*

*Article 42* provides that in this Part, the term “collateral” includes proceeds of collateral. The effect of this is that if a secured party has the right to move against collateral in the case of any default, the secured party may equally move against the proceeds of any sale of the collateral that may have occurred.

*Article 43* provides that when an event of default occurs, and a secured party has served notice on the grantor, the secured party may enforce the security interest in a number of different ways.

*Article 44* requires (subject to some exceptions) notice to be given to various parties before a secured party appropriates or sells collateral.

*Article 45* allows a sale of collateral to be carried out by any means and makes it clear that a secured party is not barred from buying the collateral that is sold.

*Article 46* requires a secured party who appropriates collateral to get a fair valuation of the collateral, and a secured party who sells collateral to sell at a fair price.

*Article 47* provides that subordinate security interests in collateral are extinguished when the collateral is appropriated or sold.

*Article 48* requires a secured party to give a statement of account to interested parties after appropriating or selling collateral.

Under *Article 49*, a secured party has a duty to distribute any surplus remaining after the appropriation or sale of collateral. *Article 49* also sets out the order of distribution.

Under *Article 50*, the secured party has the alternative of paying any surplus into the Royal Court and leaving it then to the persons entitled to it to apply to the Court for payment.

*Article 51* defines the circumstances in which a surplus exists.

*Article 52* empowers the Royal Court to make orders facilitating the realization of collateral.

By virtue of *Article 53*, a purchaser, for value and in good faith, of collateral that is sold under Part 7 takes the collateral free of various interests in the collateral.

*Article 54* makes it possible for the grantor and certain other persons with an interest in collateral to redeem it, and for the grantor to reinstate a security agreement, if they do so before the secured party appropriates it or commits to selling it. However, *Article 55* limits the number of times a security agreement may be reinstated.

*Article 56* makes it clear that the powers of a secured party under Part 7 are not affected by the bankruptcy of the grantor of the security interest.



*Article 57* restricts the extent to which bankruptcy law affects the operation of the Security Interests (Jersey) Law 201-; equally well, the Security Interests (Jersey) Law 201- does not affect the operation of certain Articles of the Bankruptcy (Désastre) (Jersey) Law 1990.

*Article 58* restricts the extent to which the Companies (Jersey) Law 1991 affects the operation of the Security Interests (Jersey) Law 201-; equally well, the Security Interests (Jersey) Law 201- does not affect the operation of certain Articles of the Companies (Jersey) Law 1991.

However, *Article 59* provides that an unperfected security interest or unperfected assignment is void as against the Viscount or a liquidator in the case of the bankruptcy of the grantor or assignor.

#### *Part 8 – Registration*

*Article 60* provides that the registrar of companies under the Companies (Jersey) Law 1991 is also to be the registrar for the purposes of the Security Interests (Jersey) Law 201-.

*Article 61* provides that the security interests register is to consist essentially of the detail required under *Article 62* in relation to each security interest or assignment that is registered. The package of information in each case is referred to in this Law as a financing statement, and in relation to each case where a change is to be registered as a financing change statement.

*Article 62* provides that the detail to go on the register is to be as the Minister prescribes by Order and otherwise as the registrar reasonably requires or permits.

*Article 63* allows financing statements to be registered at any time (though timing may have an effect on priority and other matters). *Article 63* also allows the registrar to refuse registration where information is incomplete or a fee is not paid.

*Article 64* sets out what registration consists of and requires a verification statement to be sent to the applicant for registration. *Article 65* requires the applicant to forward a copy of this statement to the grantor or assignor.

*Article 66* provides that registration is not impaired by errors unless these make it seriously misleading.

*Article 67* provides for registration to expire after 10 years unless the financing statement provides otherwise or discharge of the registration or its removal from the register occurs. However, under *Article 68*, registration may be renewed during its currency by registering a financing change statement and, as renewed, is subject to similar time limits.

*Article 69* provides for registration of transfers and further assignments where there is already a registration in place and *Article 70* where there is not. The new registration may be made at any time (*Article 71*) and, after it occurs, the transferee or further assignee effectively becomes the new secured party or assignee (*Article 72*).

*Article 73* allows registration of a financing change statement to reflect the subordination of a security interest or of an assignment.

*Article 74* allows the registration of a financing change statement to reflect an amendment to registration or a discharge of registration.

*Article 75* allows a grantor, or a person with an interest in collateral, to require a secured party to register (normally without fee: *Article 78*) a financing change statement to reflect an amendment to registration, a discharge of registration or an amendment of collateral description.

If the demand is not met, the grantor or other person may make an application seeking registration of such a financing change statement – under *Article 76* to the registrar or under *Article 77* to the Royal Court.

*Article 79* requires the registration process to be automated.

*Article 80* allows removal of registration data in certain cases, and *Article 81* provides for the restoration of data, or restoration of registration, in certain cases.

*Article 82* allows the registrar, with the consent of the secured party or assignee, to correct any administrative or clerical error made by the registrar.

*Article 83* requires the register to be reasonably accessible to the public and *Article 84* provides for the admissibility of printed search results.

#### *Part 9 – Miscellaneous*

Under *Article 85*, a grantor may require basic information free of charge from the secured party, including a copy of the security agreement. If the person to whom the requirement is made in fact no longer has an interest in the obligation or collateral, the person is obliged to communicate to the grantor the name of any known successor who has such an interest (*Article 89*).

The Royal Court may, in relation to a particular case, make an order under *Article 86* exempting a person from the requirement set out in *Article 85* or extending the time for compliance.

The Royal Court may make an order under *Article 87* for compliance with the requirement set out in *Article 85*. If the order is not complied with, the Court may make further orders under *Article 88* which may go so far as discharging the security interest or making it unperfected.

*Article 90* allows the registrar to charge fees published by the Jersey Financial Services Commission.

*Article 91* is a standard provision allowing rules of court to be made.

*Article 92* allows the Minister to make Orders in aid of the Law, including about procedure and forms for the purposes of registration.

*Article 93* allows the States to make amendments by Regulations to Parts 1, 2 and 4 of the Law, as well as to make Regulations for incidental purposes of the Law.

*Article 94* and *Schedule 1* set out consequential amendments to other legislation.

*Article 95* and *Schedule 2* make savings and transitional provisions, and *Article 95* allows the States to make further savings and consequential and transitional provisions by Regulations.

*Article 96* sets out the name of the Law and provides for it to come into force in accordance with one or more Acts of the States.

Note. Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1994, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.



Jersey

## DRAFT SECURITY INTERESTS (JERSEY) LAW 201-

### Arrangement

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Jersey

## **DRAFT SECURITY INTERESTS (JERSEY) LAW 201-**

**A LAW** to make provision about security interests in intangible movable property and about 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 –

“account debtor” means the person owing the monetary obligation under a receivable;

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

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

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

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

“attach”, in relation to a security interest, is defined by virtue of Article 17;

“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;

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

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

“event of 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) an event that, under the security agreement, gives the secured party the right to enforce the security;

“financing change statement” means the data required or authorized by or under this Law to be entered in the register in respect of any transfer, assignment, subordination, discharge, amendment or other action or matter in respect of a security interest, or assignment of a receivable, that has already been registered;

“financing statement” means the data required or authorized by or under this Law to be entered in the register to effect the registration of a security interest or of an assignment of a receivable;

“grantor” means the person who grants a security interest, whether or not the person is also the obligor in relation to the obligation secured by the security interest;

“intangible movable property” means a documentary intangible or any other movable property that does not consist of goods, money or documents of title to goods, and includes cash that is not 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 the person’s own books details of investment securities credited to securities accounts maintained by an intermediary for other parties for whom the person acts as manager or otherwise in a purely administrative capacity; or
- (c) maintains registers or accounts in the capacity of operator of a settlement system;

“investment security” means –

- (a) an investment specified in any of paragraphs 1 to 8 and 10 of Schedule 1 to the Financial Services (Jersey) Law 1998<sup>1</sup>;
- (b) a unit in a unit trust not already referred to in paragraph (a); or



(c) an interest in an investment referred to in paragraph (a) or in a unit referred to in paragraph (b),

and –

(i) includes anything referred to in paragraph (a), (b) or (c) that is held with an intermediary;

(ii) includes a right relating to anything referred to in paragraph (a), (b) or (c); and

(iii) excludes money received in respect of anything referred to in paragraph (a), (b), (c), (i) or (ii);

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

“Jersey company” means a company, or other person who is not an individual, registered or otherwise formed in Jersey;

“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;

“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;

“obligor” means a person who owes payment or performance of an obligation secured by a security interest, whether or not the person is the grantor of the security interest;

“Order” means Order made under this Law by the Minister;

“original collateral” means collateral from which proceeds are derived;

“perfect” is defined by virtue of Article 21;

“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;

“proceeds” means identifiable or traceable property, being intangible movable property in which the grantor of a security interest acquires an interest and that is derived directly or indirectly from a dealing with the collateral that is subject to the security interest or from a dealing with the proceeds of such collateral, and includes –

- (a) a right to an insurance payment or other payment as indemnity or compensation for loss (or reduction in value) of collateral; and
- (b) a right to an insurance payment or other payment as indemnity or compensation for loss (or reduction in value) of proceeds of collateral,

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

“purchase” means acquisition for value, whether by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue, 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 an obligation to repay part or all of so much of any value (being value given to the grantor for the purpose of enabling the grantor to acquire rights in the collateral) as is in fact applied to acquire those rights;

“receivable” means a monetary entitlement, 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 loan, a deposit account or a right to payment embodied in a negotiable instrument or an investment security;

“the register” means the register maintained under Part 8;

“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;
- (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; or
- (d) in respect of any transfer, assignment, subordination, discharge, amendment, or other action or matter, in respect of a security interest or assignment of a receivable, to make the subject of a financing statement, or financing change statement, that is entered in the register;

“registrar” means the registrar referred to in Article 60;

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

“securities account” –

- (a) means an account maintained by an intermediary, being an account to which investment securities may be credited or debited; and
- (b) includes a reference to the investment securities so credited;

“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 investment securities on records of the issuer or other records that constitute the primary record of entitlement to investment securities as against the issuer;

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

“transfer” includes an assignment and a novation, whether by way of security or otherwise;

“value” means money, or money’s worth, sufficient to support an onerous contract, that is, a *contrat à titre onéreux*, no matter by whom the money or money’s worth is provided, and includes an antecedent debt or liability;

“verification statement” means a statement served under Article 64(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 Successors included

For the avoidance of doubt, a reference in this Law to a grantor, obligor or secured party includes a reference to a successor or assign of, respectively, the grantor, obligor or secured party.

**3 Meaning of “control”**

- (1) A secured party has control of collateral in any of the circumstances set out in paragraphs (3) to (6).
- (2) For the purposes of this Article any right of the grantor to substitute equivalent collateral or withdraw excess collateral does not of itself mean that collateral 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 with the written agreement of the grantor and the bank, or other institution, with which the deposit account is held;
  - (b) the grantor, the secured party and the bank or other institution have agreed in writing that the bank, or other institution, with which the deposit account is held will comply with instructions from the secured party directing the disposition of funds in the deposit account;
  - (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 grantor and notice of the assignment is given in writing to the bank, or other institution, with which the deposit account is held; 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 maintained by an intermediary if –
  - (a) the securities account is transferred into the name of the secured party with the written agreement of the grantor and of the intermediary;
  - (b) the grantor, 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 investment securities credited to the securities account; or
  - (c) the secured party is the 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.
- (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 and 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.
- (7) For the avoidance of doubt, a secured party may for the purposes of this Article have control of something because another person has control of the thing for or on behalf of the secured party, whether as trustee or in some other capacity.

## **PART 2**

### **SCOPE OF LAW**

#### **4 Application of Law**

This Law applies (except as provided in Article 95 and Schedule 2) only to the following –

- (a) security interests created, after Part 3 comes into force, in –
  - (i) one or more documentary intangibles situated in Jersey,
  - (ii) one or more directly-held non-negotiable investment securities listed on a register maintained –
    - (A) in Jersey,
    - (B) by a Jersey company, or
    - (C) by a Jersey individual,
  - (iii) one or more investment securities held through a securities account with an intermediary where the account is maintained in Jersey,
  - (iv) one or more deposit accounts maintained in Jersey, or
  - (v) intangible movable property not referred to in any of subparagraphs (i) to (iv), where an account debtor (or other person) owing to the grantor payment or other performance of an obligation relating to the intangible movable property is a Jersey company or a Jersey individual;
- (b) an assignment, after Part 6 comes into force, of a receivable payable by a Jersey company or a Jersey individual;
- (c) an interest, or transaction, prescribed by Order for the purposes of this Article.

#### **5 Parties may agree that Law applies to agreement**

- (1) If 2 or more persons reach agreement that, in their relations with each other, this Law shall apply to an agreement (whether or not it is the same as the first-mentioned agreement) –
  - (a) to which those persons are parties;

- (b) that relates to intangible movable property; and
- (c) that creates or makes provision for a security interest in that property, being a security interest that would, except for the operation of Article 4, be a security interest to which this Law applies,

nothing in this Law shall prevent this Law from so applying.

- (2) For the avoidance of doubt, an agreement that –
  - (a) created or made provision for a continuing security interest (within the meaning of Schedule 2); and
  - (b) has not been amended after Part 3 came into force,is an agreement that satisfies paragraph (1)(b) and (c).
- (3) For the purposes of this Article, the intangible movable property referred to in paragraph (1)(b) may be situated anywhere in the world.

## **6 Security interests in own obligation**

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

- (a) a bank, or other deposit-taking institution, that has an obligation to pay money to a depositor in respect of a deposit account held by the bank or institution; or
- (b) an intermediary that has an obligation to deliver or transfer securities, or money, cheques or drafts, to the holder of a securities account, or deposit account, with the intermediary,

may take a security interest from the depositor, or holder of the account, in its own such obligation.

## **7 Secured party with title to collateral**

The fact that the secured party and not the grantor may hold title to collateral under a security agreement shall not affect the application of any provision of this Law relating to rights, obligations, or 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 lien, charge, or other interest in intangible movable property, created by any other enactment or by the operation of any rule of law;
- (b) any right of set-off, netting, or combination of accounts;
- (c) 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) 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;
- (b) a transfer of present or future wages, salary, pay, commission, or any other compensation for labour or personal services of an employee;
- (c) an assignment for the general benefit of creditors of the person making the assignment;
- (d) a transfer of a right to damages in tort;
- (e) an assignment of receivables made solely to facilitate the collection of the receivables on behalf of the person making the assignment;
- (f) an assignment of a single receivable or negotiable instrument in whole or in partial satisfaction of a pre-existing indebtedness;
- (g) 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;
- (h) 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;
- (i) a transfer or other transaction by way of security in respect of a fishing quota or fishing entitlement;
- (j) a sale coupled with a repurchase;
- (k) stock lending or securities lending;
- (l) any transaction prescribed by Order for the purposes of this Article.

## 10 Subordination agreements

- (1) For the purposes of this Law, an agreement (“a subordination agreement”) between creditors of the same obligor, 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 obligor 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 Loi (1880) sur la propriété foncière**

For the avoidance of doubt, it is hereby declared that nothing in –

- (a) the Loi (1880) sur la propriété foncière; or
  - (b) the rule of law *donner et retenir ne vaut*,
- shall affect the validity of a security interest.

**12 Exclusive application of this Law**

After Part 3 comes into force, no security interest to which this Law applies may be created under the law of Jersey except in accordance with this Law.

**13 Capacity to give security under foreign law**

- (1) In this Article –

“foreign law” means any law other than the law of Jersey;

“person” means a person having the capacity to create a security interest under this Law;

“property” means (despite anything in this Part) 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 that is –
- (a) incorporated, resident or domiciled in Jersey;
  - (b) a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997; or
  - (c) a separate limited partnership registered under the Separate Limited Partnerships (Jersey) Law 2011<sup>2</sup>,

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.

**14 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.
- (2) Any priority under this Law of a perfected security interest, or of a 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 in a receivable, or of a 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.

### **PART 3**

#### **ATTACHMENT AND PERFECTION**

##### **15 Security interest created by agreement**

- (1) A security interest to which this Law applies may only be created by agreement.
- (2) For the avoidance of doubt –
  - (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, a security agreement, and any security interest created by a security agreement, shall be effective according to the terms of the agreement and enforceable as –
  - (a) between the parties to the agreement;
  - (b) against purchasers of the collateral;
  - (c) against creditors of the grantor;
  - (d) against the Viscount (or a liquidator or administrator); and
  - (e) against third parties generally.
- (4) A security interest is extinguished in accordance with the provisions of the agreement by which it was created, by subsequent agreement between the parties to that agreement, by release of the collateral, or by the operation of this Law or any other enactment.

##### **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.

##### **17 Attachment: effect**

The effect of the attachment of a security interest to collateral is that the security interest becomes enforceable against the grantor and with respect to the collateral.

**18 Attachment: general rule**

- (1) Except as provided in Articles 19 and 20, a security interest attaches to collateral under a security agreement at the time when the following 3 conditions are satisfied –
  - (a) value has been given in respect of the security agreement;
  - (b) the grantor has rights in the collateral, or the power to grant rights in the collateral to a secured party;
  - (c) one or both of the following clauses are satisfied –
    - (i) there is possession or control of the collateral by the secured party or on the secured party's behalf by a person other than the grantor or obligor,
    - (ii) the security agreement is in writing signed by or on behalf of the grantor and contains a description of the collateral that is sufficient to enable the collateral to be identified,or instead at a later time that the parties to the security agreement have determined by that or another agreement.
- (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.
- (3) For the purposes of this Article, the attachment of a security interest to collateral is not affected just because the grantor retains, in the absence of a contrary direction from the secured party, the right to deal with the collateral free from the security interest and without a duty to account for the proceeds or to replace the collateral.

**19 After-acquired property**

- (1) A security agreement may provide for a security interest in after-acquired property.
- (2) 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 acquisition by the grantor of rights in the property and without the need for specific appropriation of the property by the grantor.
- (3) An assignment of a future receivable vests the receivable in the assignee on the acquisition of the receivable by the assignor and without the need for specific appropriation by the assignor.
- (4) In this Article, “after-acquired property” means intangible movable property that is acquired by a grantor after a security agreement is entered into by the grantor.

**20 Investment securities: automatic attachment and perfection in favour of intermediary**

- (1) A security interest in favour of an intermediary attaches to a person's investment securities held with the intermediary, and is perfected, 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; and
  - (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 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 paragraph (1), the order in which those conditions are satisfied makes no difference.
- (3) An assignment of a receivable is perfected by registration.

**22 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 grantor or obligor, perfects a security interest in collateral that is a documentary intangible.
- (2) In paragraph (1), possession means possession of the relevant negotiable instrument or of the certificate embodying the right to the relevant negotiable investment security.
- (3) Control of collateral by the secured party, or on the secured party's behalf by a person other than the grantor or obligor, perfects a security interest in collateral of any of the kinds referred to in paragraphs (3) to (6) of Article 3.
- (4) 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.
- (5) Subject to Article 23, perfection by possession, control or registration continues only while the possession, control or registration (respectively) is maintained.

**23 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.

#### **24 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.

#### **25 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) are cash proceeds, 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.

#### **26 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 25.

**27 Temporary perfection: negotiable instrument or investment security returned to grantor**

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 grantor, if –

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

**28 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 if –
  - (a) the collateral was situated in that other jurisdiction at the time when the security interest attached;
  - (b) this Law would have applied to the security interest if the collateral had instead been situated in Jersey at that time; and
  - (c) the collateral has been moved to Jersey since that time.
- (2) If the security interest was a perfected security interest under the law of the other jurisdiction when the collateral was moved to Jersey –
  - (a) the security interest shall be temporarily perfected (as from the time of its perfection under the law of the other jurisdiction) by virtue of this paragraph until the expiration of 30 days after the day on which the collateral was moved to Jersey;
  - (b) the security interest may be perfected under this Part; and
  - (c) if the security interest is perfected under this Part within the 30 days referred to in sub-paragraph (a), that perfection shall be as from the time of the perfection of the security interest under the law of the other jurisdiction.
- (3) If the security interest was not a perfected security interest under the law of the other jurisdiction at the time when the collateral was moved to Jersey –
  - (a) the security interest may be perfected under this Part; and
  - (b) that perfection shall be as from the time of the perfection of the security interest under this Part.

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**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 those interests (whether security interests or assignments), where perfection has been continuous, goes to the interest in relation to which either of the following events first occurred –
    - (i) in the case of a security interest or assignment, a financing statement was registered,
    - (ii) in the case of a security interest, the 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 there are one or more unperfected security interests in the receivable and one or more unperfected assignments of the receivable, priority among those interests (whether security interests or assignments) is to be determined by

the order of events, where an event is either the attachment of a security interest or an assignment, as each case requires.

- (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.

### **30 Special priority rules for certificated investment securities, securities accounts and deposit accounts**

- (1) This Article governs priority between conflicting security interests in the same investment security (being an investment security represented by a certificate), the same securities account or the same deposit account.
- (2) A security interest under which a secured party has possession or control of such an investment security, control of a securities account or control of a 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 such an investment security, control of a securities account or control of a deposit account, rank according to the order in which possession or control was acquired.
- (4) Conflicting security interests granted by an intermediary rank equally if under those security interests no secured party has control.
- (5) A security interest held by an intermediary in a securities account maintained in the name of the obligor with the intermediary, or held by a bank or other deposit-taking institution in a deposit account maintained in the name of the obligor with the bank or other institution, has priority over a conflicting security interest held by another party.
- (6) In all other cases, priority between conflicting security interests in the same investment security (being an investment security represented by a certificate), the same securities account or the same deposit account is governed by Article 29.

### **31 Priority where security interest transferred**

- (1) A security interest that is transferred has the same priority as it had immediately before the transfer.
- (2) If the same security interest is transferred more than once by the same secured party, priority in the security interest goes –
  - (a) if a transferee has possession or control of the collateral, to the transferee who has possession or control of the collateral; or
  - (b) if no transferee has possession or control of the collateral, to the transferee whose transfer is the transfer in relation to which a financing statement or financing change statement was first registered.

**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.
- (3) However, a transferee of a subordinated security interest is not bound by an agreement referred to in paragraph (2) unless, at the time of the transfer –
  - (a) a financing statement or financing change statement has been registered in respect of the subordination;
  - (b) the transferee is a party to the agreement referred to in paragraph (2); or
  - (c) the agreement transferring the security interest provides otherwise.

**33 Future advances and priorities in relation to future advances**

- (1) A security agreement may provide that the obligations secured under it may include obligations as to future advances.
- (2) A security interest shall not be extinguished by re-payment of a current advance if the security agreement makes provision as referred to in paragraph (1), unless the parties have agreed otherwise.
- (3) A security interest relating to obligations as to advances and future advances has the same priority in respect of all advances whether or not they are made under an obligation.
- (4) In this Article –

“advance” –

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

“debtor” means the person who is the debtor in relation to an advance;

“future advance” means an advance made pursuant to a security agreement after the initial advance made pursuant to the agreement.

**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 grantor 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.

## **PART 5**

### **TAKING FREE**

#### **35 Taking collateral free of unperfected security interests**

A person who acquires 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 person was a party.

#### **36 Creditor who receives payment of debt takes free**

- (1) A creditor who receives payment of a debt owing by an obligor through an obligor-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 obligor to defeat the rights of the person who has the security interest referred to in that paragraph.
- (4) In paragraph (1), “obligor-initiated payment” means a payment made by the obligor 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 obligor when the payment was made.

#### **37 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.

#### **38 Purchaser of investment security takes free**

- (1) If –
- (a) a person gives value for an investment security represented by a certificate; and

- (b) the person takes possession of the certificate,  
the person takes the investment security free of any security interest in the investment security in favour of another party even if the person knows of such a security interest.
- (2) However, paragraph (1) does not apply if, at the time when the person agrees to acquire the investment security, the person knows that its disposition to the person would be in breach of the security agreement that created the security interest.
- (3) In a case to which Article 30 does not apply, if –
- (a) a person gives value for an investment security held with an intermediary; and
- (b) the investment security held with the intermediary is transferred to a securities account held in the person's name with the same or another intermediary,  
the person takes the investment security held with the intermediary free of any security interest, in the investment security held with the intermediary, in favour of another party even if the person knows of such a security interest.
- (4) However, paragraph (3) does not apply if, at the time when the person agrees to acquire the investment security, the person knows that its disposition to the person would be in breach of the security agreement that created the security interest.

## PART 6

### ASSIGNMENTS OF RECEIVABLES

#### **39 Effect of restriction on assignment (whether or not 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.

#### **40 Account debtor's duty (where assignment not 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.

#### **41 Rights of assignee of receivable (whether or not assignment is by way of security)**

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

## **PART 7**

### **ENFORCEMENT OF SECURITY INTERESTS**

#### **42 Interpretation**

In this Part, except Article 43, a reference to collateral includes a reference to its proceeds.

#### **43 Enforcement**

- (1) The power of enforcement in respect of a security interest shall become exercisable when –
  - (a) an event of default has occurred in relation to the security agreement that created or made provision for the security interest; and
  - (b) the secured party has served on the grantor written notice specifying the event of default.

- 
- (2) A secured party may exercise the power of enforcement in respect of a security interest by doing any of the following in relation to the collateral that is subject to such security interest, or in relation to any proceeds of that collateral –
    - (a) appropriating the collateral or proceeds;
    - (b) selling the collateral or proceeds;
    - (c) taking any of the following ancillary actions –
      - (i) taking control or possession of the collateral or proceeds,
      - (ii) exercising any rights of the grantor in relation to the collateral or proceeds,
      - (iii) instructing any person who has an obligation in relation to the collateral or proceeds to carry out the obligation for the benefit of the secured party;
    - (d) applying any remedy that the security agreement provides for as a remedy that is exercisable pursuant to the power of enforcement, to the extent that the remedy is not in conflict with this Law.
  - (3) The secured party may do more than one of the things set out in paragraph (2) to the extent that those things are not in conflict.
  - (4) This Article does not prevent the secured party from taking such other action in respect of the collateral as is permitted by the security agreement and is not in conflict with this Law, whether before or after the power of enforcement becomes exercisable.

#### **44 Notice of appropriation or sale of collateral**

- (1) A secured party who, under this Part, appropriates collateral shall, not less than 14 days before appropriating the collateral, give written notice to the following persons –
  - (a) the grantor;
  - (b) any person who, 21 days before the appropriation, has a registered security interest in the collateral;
  - (c) any person other than the grantor who has an interest in the collateral and has, not less than 21 days before the appropriation, given the secured party notice of that interest.
- (2) A secured party who, under this Part, sells collateral shall, not less than 14 days before selling the collateral, give written notice to the following persons –
  - (a) the grantor;
  - (b) any person who, 21 days before the sale, has a registered security interest in the collateral;
  - (c) any person other than the grantor 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.
- (3) Paragraph (2) does not apply to the extent that –
  - (a) the collateral is a quoted investment security, or anything else prescribed for the purposes of this paragraph;

- (b) the secured party believes on reasonable grounds that the collateral will decline substantially in value if it is not disposed of within 14 days after the relevant event of default; or
  - (c) for any other reason, the Royal Court orders, on an *ex parte* application, that notice need not be given under paragraph (2).
- (4) If the secured party and another person have agreed in writing in one or both of the following terms –
- (a) that notice need not be given under this Article to the other person;
  - (b) for notice under this Article to be given to the other person within a period different from that specified in this Article,
- this Article shall, in relation to that person, have effect subject to that term or those terms.

#### **45 Methods of sale of collateral**

- (1) A secured party may effect a sale of collateral under this Part by auction, public tender, private sale, or another method.
- (2) A secured party is not prevented by this Part from buying collateral that the secured party sells under this Part.

#### **46 Duty to obtain fair valuation or fair price**

- (1) A secured party who appropriates collateral under this Part owes a duty –
  - (a) to take all commercially reasonable steps to determine the fair market value of the collateral, as at the time of the appropriation; and
  - (b) to act in other respects in a commercially reasonable manner in relation to the appropriation.
- (2) A secured party who sells collateral under this Part owes a duty –
  - (a) to take all commercially reasonable steps to obtain fair market value for the collateral, as 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.
- (3) A duty under this Article is owed to the following persons –
  - (a) the grantor;
  - (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 appropriation or sale, been registered, and
    - (ii) the registration remains effective immediately before the appropriation or sale;

- (c) any person, other than the grantor, who has an interest in the collateral and has, not less than 21 days before the appropriation or sale, given the secured party written notice of that interest.

#### **47 Extinction of subordinate security interests on appropriation or sale**

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

#### **48 Secured party to give statement of account to grantor and others**

If collateral is appropriated or sold by a secured party under this Part after an event of default, the secured party shall, within the 14 days after the day on which the collateral is appropriated or sold, give each of the persons referred to in Article 49(1)(a) to (c) a statement of account in writing, showing –

- (a) the gross value realized by virtue of the appropriation or the amount of the gross proceeds of sale;
- (b) the amount of the secured party's reasonable costs incurred in relation to the appropriation or sale (being the costs referred to in Article 51(2) or (3) respectively);
- (c) the amount of any other reasonable expenses incurred by the secured party in enforcing the security agreement after the event of default;
- (d) the net value of the collateral, or net proceeds, referred to in Article 51(2) or (3) respectively; and
- (e) the surplus owing by, or debt owing to, the secured party, as the case may be.

#### **49 Distribution of surplus**

- (1) If a secured party has appropriated, or sold, collateral under this Part, 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 a subordinate security interest in the collateral and has registered a financing statement over that security interest (where the registration remained effective immediately before the appropriation or sale);
  - (b) then any other person (other than the grantor) who has given the secured party notice that that person claims an interest in the collateral and in respect of which the secured party is satisfied that that person has a legally enforceable interest in the collateral;
  - (c) finally the grantor.
- (2) Where 2 or more persons have subordinate security interests to which paragraph (1)(a) applies, they shall be paid in the order of priority of those security interests as determined under Part 4.

- (3) The application of paragraph (1) to a security interest is not affected by the extinction of the security interest under Article 47.

## **50 Surplus may be paid into court**

- (1) The secured party may alternatively discharge its obligation under Article 49 to pay any amount of resulting surplus by paying that amount into the Royal Court.
- (2) The surplus may then only be paid out if the Royal Court so orders on application by a person entitled to the surplus.
- (3) That entitlement shall be determined in accordance with Article 49.

## **51 When does a surplus exist?**

- (1) For the purposes of Articles 49 and 50, there is a resulting surplus if –
  - (a) a secured party has appropriated the collateral under this Part, and the net value of the collateral exceeds –
    - (i) the amount of the debt owed to the secured party by the obligor (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); or
  - (b) a secured party has sold the collateral under this Part, and the net proceeds of the sale exceed –
    - (i) the amount of the debt owed to the secured party by the obligor (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).
- (2) In paragraph (1)(a), “net value of the collateral” means the value of the collateral, minus the secured party’s reasonable costs incurred (for example, the cost of having the collateral valued) of, and incidental to, the appropriation.
- (3) In paragraph (1)(b), “net proceeds” means the proceeds of the sale minus the secured party’s reasonable costs incurred in, and incidental to, taking possession or control of, holding, valuing, and preparing the sale of, and selling, the collateral.

## **52 Court may facilitate realization of collateral**

The Royal Court may, on application by the secured party when an event of default occurs in relation to 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 vesting title to the collateral in the secured party free of the right of redemption or reinstatement under Article 54;
- (d) an order enforcing an instruction given under Article 43(2)(c)(iii);
- (e) any other order.

### **53 Effect of disposal of collateral to purchaser for value and in good faith**

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

### **54 Entitled persons may redeem collateral; grantor may reinstate agreement**

- (1) Paragraphs (2) and (4) apply at any time before a secured party under a security agreement appropriates the relevant collateral under this Part, enters into any agreement to sell the collateral under this Part, or has otherwise acted irrevocably in relation to the collateral, after an event of default.
- (2) A person who is listed in Article 44(1)(a) to (c) or (2)(a) to (c) may redeem the collateral by –
  - (a) tendering fulfilment of the obligations secured by the collateral; and
  - (b) paying a sum equal to the reasonable costs incurred referred to in Article 51(2) or (3), as the case requires, and any other reasonable expenses incurred by the secured party in enforcing the security agreement after the event of default.
- (3) The grantor's right to redeem the collateral has priority over any other person's right to redeem the collateral.
- (4) The grantor may reinstate the security agreement by –
  - (a) paying any sums actually in arrears in relation to the security agreement;
  - (b) otherwise remedying anything that is an event of default under the security agreement; and
  - (c) paying a sum equal to the reasonable costs of seizing, holding, processing, and preparing the collateral for appropriation, or sale, under this Part (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.

- (5) Paragraph (4) shall apply subject to –
- (a) the security agreement; and
  - (b) any written agreement between the secured party and the grantor entered into after the relevant event of default.

#### **55 Limit on reinstatement of security agreement**

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

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

#### **56 Secured party's powers not affected by insolvency**

If the grantor of a security interest becomes bankrupt or the grantor or the grantor's property is subjected, whether in Jersey or elsewhere, to any other judicial arrangement or proceeding consequent upon insolvency, that shall not affect the power of a secured party to appropriate or sell collateral, or otherwise act in relation to collateral, under this Part.

#### **57 Certain provisions of Bankruptcy (Désastre) (Jersey) Law 1990 not affected**

- (1) Except as provided by Article 59 and paragraph (2), nothing in the law relating to bankruptcy (including the Bankruptcy (Désastre) (Jersey) Law 1990<sup>3</sup>) 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 Certain provisions of Companies (Jersey) Law 1991 not affected**

- (1) Except as provided by paragraph (2), nothing in the Companies (Jersey) Law 1991<sup>4</sup> affects the operation of this Law.
- (2) However, nothing in this Law affects the operation of Articles 2A(7), 127(3), 176(3), 176A(2) or 179(5) of the Companies (Jersey) Law 1991.

**59 Limited avoidance of security interest or assignment in case of bankruptcy**

- (1) In the case of the bankruptcy of the grantor of a security interest, the security interest is void as against the Viscount (or liquidator) and the grantor's creditors unless the security interest is perfected before the grantor becomes bankrupt.
- (2) In the case of the bankruptcy of the assignor of a receivable, the assignment of the receivable is void as against the Viscount (or liquidator) and the assignor's creditors unless the assignment is perfected before the assignor becomes bankrupt.

**PART 8****REGISTRATION****60 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) for the purposes of this Law, maintain a register; and
  - (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.

**61 Register**

The register shall consist of –

- (a) financing statements and financing change statements; and
- (b) such other matter as is authorized or required by or under this Law to be entered or registered in the register.

**62 Contents of registration**

- (1) Registration of a security interest, or of an assignment of a receivable, or of any transfer, assignment, subordination, discharge, amendment or other action or matter in respect of a security interest or assignment of a receivable, shall consist of such data, in such form, as the Minister may prescribe by Order.
- (2) In the absence of any such Order, or to the extent that such an Order is silent on any matter, the registration shall consist of such details as the registrar may reasonably require or permit.

**63 Timing and other formalities**

- (1) A financing statement may be registered before or after –

- (a) the security agreement is made to which the financing statement relates;
  - (b) the assignment of a receivable occurs to which the financing statement relates; or
  - (c) the security interest has attached, being the security interest created by the security agreement to which the financing statement relates.
- (2) A financing statement or financing change statement may relate to one or more security agreements or assignments of receivables.
- (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 62; or
  - (b) if the fee required by the registrar is not paid for its registration.

#### **64 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 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.
- (2) The registrar shall serve, or cause to be served, a verification statement, as soon as reasonably practicable after a financing statement or financing change statement has been registered.
- (3) The verification statement shall –
- (a) give notice of the fact that the financing statement or financing change statement has been registered and of the time and date of the registration; and
  - (b) be served on the applicant for registration of the financing statement or financing change statement.

#### **65 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 grantor 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.

#### **66 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.

- (2) Without limiting the operation of paragraph (1), a registration is invalid if there is a seriously misleading defect, irregularity, omission, or error, in any name, or registration number, required by or under Article 62 in respect of the registration.
- (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.
- (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.

### **67 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) in any case, the registration of the statement is discharged, or removed from the register;
- (b) if a duration, or expiry date, for its registration is provided for in the statement, the period expires or the date arrives;
- (c) if no duration, or expiry date, for its registration is provided for in the statement, 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.

### **68 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) in any case, the registration of the later statement is discharged, or removed from the register;
  - (b) if a duration, or expiry date, for its registration is provided for in the later statement, the period expires or the date arrives;
  - (c) if no duration, or expiry date, for its registration is provided for in the later statement, 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.

**69 Registration reflecting transfer where prior 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 a perfected assignment 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 that part of the collateral.

**70 Registration reflecting transfer where no prior 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 unperfected assignment assigns the receivable, a financing statement may be registered in which the new assignee is disclosed as the assignee.

**71 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.

**72 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.
- (2) After the registration of a financing change statement disclosing the further assignment of a receivable that had been the subject of an assignment, the further assignee shall become, for the purposes of this Law, the assignee in respect of the receivable.

**73 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.

**74 Voluntary amendment or discharge of registration**

- (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.

**75 Demand for registration of financing change statement**

- (1) The person named as grantor in a registration of a security interest, or any person with an interest in property that falls within a collateral description included in a registration of a security interest, 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 relevant security agreement 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 registration;
  - (c) the collateral described in the registration includes an item or kind of property that is not collateral under the relevant security agreement;
  - (d) no relevant security agreement exists between the parties named in the registration, and the person named in the registration as the secured party has not entered an agreement to give value, being an agreement that is to be secured by the relevant security agreement; or
  - (e) the security interest has been 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).
- (3) The person named as grantor 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 2 persons has 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.

#### **76 Procedure where no compliance with demand**

- (1) A person who has served a demand under Article 75 may apply to the registrar for the registration of a financing change statement to the effect referred to in Article 75(2) or (4) if the party on whom the demand under Article 75 was served –
- (a) has not complied with the demand within the 30 days after the day when it was served; and
  - (b) has not, within those 30 days, served on the person and on the registrar notice of objection to the registration of a financing change statement to that effect.
- (2) If, on such an application, the registrar is satisfied of the matters specified in paragraph (1)(a) and (b), the registrar shall register the financing change statement.

#### **77 Court order**

- (1) A person who has served a demand under Article 75 may apply to the Royal Court for an order requiring the registrar to register a financing change statement to the effect referred to in Article 75(2) or (4) if the party on whom the demand under Article 75 was served –
- (a) has not complied with the demand within the 30 days after the day when it was served; and
  - (b) has, within those 30 days, served on the person and on the registrar notice of objection to the registration of a financing change statement to that effect.
- (2) If, on such an application, and after examining the objection, the Royal Court is not satisfied that the objection is justified and is satisfied that it is in the interests of justice to make the order applied for, the Court may make the order applied for.
- (3) The Royal Court may make such other order as it thinks proper for the purpose of giving effect to an order made under paragraph (2).

#### **78 No fee for compliance with demand**

A party on whom a demand is served under Article 75 shall not charge any fee for compliance with the demand, unless the party and the person serving the demand otherwise agree.

**79 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 90;
  - (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;
  - (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 by the person in relation to the register.
- (3) Nothing in this Article prevents the imposition by the registrar of reasonable conditions for the use of the system.

**80 Removal of data from register**

- (1) Data in a registration may be removed from the register –
  - (a) when the registration is no longer effective; or
  - (b) to the extent of the discharge of the registration.
- (2) Data in a registration may be removed from the register if the registrar is satisfied that the data are frivolous or vexatious.
- (3) The registrar shall, before he or she makes a decision that he or she is satisfied as referred to in paragraph (2), 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, within the 30 days after the day when those steps are complete, that the data are not frivolous or vexatious.
- (4) If the person so named fails within those 30 days to show to the registrar's satisfaction that the data are not frivolous or vexatious, the registrar may, in the registrar's discretion, remove the data from the register.

**81 Restoration of registration**

- (1) If data in a registration are removed from the register in accordance with Article 80(4), the Royal Court may, on the application of the person



referred to in that paragraph, make an order directing that the data be restored to the register if it is satisfied that the data are neither frivolous nor vexatious.

- (2) The Royal Court may make such other order as it thinks proper for the purpose of giving effect to an order made under paragraph (1).
- (3) The registrar (and any other person to whom an order under this Article is directed) shall comply with the order.
- (4) The registrar may restore data to the register (or restore a registration that has been discharged) if it appears to the registrar that the data have been incorrectly removed from the register (or the registration incorrectly discharged) because of an administrative or clerical error made by or under the authority of the registrar.
- (5) A registration to which data have been restored (or a registration restored) under this Article shall be regarded as having continued in force as if the relevant data had not been removed from the registration (or the relevant registration had not been discharged).
- (6) However, the operation of paragraph (4) or (5) in relation to a registration is subject to any order that the Royal Court may make on application by a person named in the registration immediately before the removal of data (or discharge of registration) or by any other person who would be affected by the restoration of the data (or of the registration).

## **82 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.

## **83 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 79, searches to be made and any other requirements of this Law to be met.

## **84 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.

## **PART 9**

### **MISCELLANEOUS**

#### **85 Secured party to provide information**

- (1) The grantor in respect of a security interest may require the secured party to provide the grantor free of charge with any of the following –
- (a) a copy of the security agreement;
  - (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) a description of the collateral under the security agreement.
- (2) Subject to paragraph (3), 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) A secured party may satisfy a requirement under paragraph (1)(c) by –
- (a) requiring (within the 30 days referred to in paragraph (2)) the grantor to provide a list or description of the collateral; and
  - (b) having received the list or description, providing the grantor, within 30 days after the receipt of the list or description, with the secured party's approval or corrections of that list or description.
- (4) Paragraph (1)(c) does not apply if the security interest extends over all of the grantor's intangible movable property.
- (5) Paragraph (1) does not apply if the copy, statement, or description, required is, or is required to be, available under any other enactment or rule of law to the person who made the requirement.
- (6) A person who fails to comply with this Article shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

#### **86 Exemption from Article 85**

- (1) The Royal Court may, on application by a secured party, make an order exempting the secured party from compliance with a requirement made under Article 85 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 Royal Court may, on application by a secured party, make an order extending the time for compliance with a requirement made under Article 85 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.

- (3) The Royal Court may make such other order as it thinks proper for the purpose of giving effect to an order made under paragraph (1) or (2).
- (4) Article 85 shall not apply to the extent of any exemption by order of the Royal Court under this Article.
- (5) The application of an expression of time in Article 85 is subject to any extension of that time by order of the Royal Court under this Article.
- (6) Article 85 shall not apply in such circumstances as the Minister may by Order prescribe.

### **87 Order for compliance**

If, without reasonable excuse, a secured party has failed to comply with a requirement under Article 85, the Royal Court may, on application by the grantor who made the requirement, or by any other person who has an interest in the matter, make one or both of the following orders –

- (a) an order that the secured party comply with the requirement;
- (b) such other order as the Court thinks proper.

### **88 Failure to comply with order**

If a person fails to comply with an order under Article 87, the Royal Court may, on application by the grantor who made the requirement under Article 85 –

- (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 any registration of the security interest; or
- (b) make such other order as it thinks fit for the purpose of giving effect to the order under Article 87.

### **89 Obligation to disclose successor**

- (1) If a grantor in respect of a security interest does not know the identity, or address, of the current secured party in relation to the security interest, the grantor may require a person who was a secured party in relation to the security interest and of whom the grantor does know the identity and address to inform the grantor of the name and address of the person's immediate successor in interest and of the latest successor in interest.
- (2) The person shall comply with the requirement to the extent that those matters are known to the person.
- (3) A person who fails to comply with this Article shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

### **90 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, the system referred to in Article 79.
- (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<sup>5</sup>, and may include periodic fees in respect of registrations maintained on the register.

## 91 Rules of court

The power to make rules of court under the Royal Court (Jersey) Law 1948<sup>6</sup> shall include a power to make rules for the purposes of this Law and proceedings under this Law.

## 92 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 access to it, its location, suspension of its operation, suspension of access to it 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, or of proceeds, 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, of financing change statements, and of 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.
- (2) An Order made under this Law may contain such transitional, consequential, incidental or supplementary provisions, or such savings, as appear to the Minister to be necessary or expedient for the purposes of the Order.
- (3) A reference in this Article to procedures does not include the procedure of any court.

### **93 Regulations**

- (1) The States may by Regulations amend Parts 1, 2 and 4.
- (2) The States may make Regulations, not inconsistent with this Law, for or with respect to any matter that by this Law is required or permitted to be prescribed by Regulations or that is necessary or convenient to be prescribed by Regulations for carrying out or giving effect to this Law.
- (3) Regulations made under this Law may contain such transitional, consequential, incidental or supplementary provisions, or such savings, as appear to the States to be necessary or expedient for the purposes of the Regulations.

### **94 Amendments**

Schedule 1 shall have effect.

### **95 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) The States may, by Regulations, amend any enactment (other than this Law) consequentially on the enactment of this Law.
- (4) 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.
- (5) To the extent to which any such provision comes into force on a date that is earlier than the date on which notice has been published (as required by

Article 3 of the Official Publications (Jersey) Law 1960<sup>7</sup>) of its making, 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 latter date; 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 latter date.

**96 Citation and commencement**

- (1) This Law may be cited as the Security Interests (Jersey) Law 201-.
- (2) This Law shall come into force on such day or days as the States may by Act appoint.

**SCHEDULE 1**

(Article 94)

**AMENDMENTS****1 Security Interests (Jersey) Law 1983 amended**

The Security Interests (Jersey) Law 1983<sup>8</sup> shall be amended as follows –

(a) after Article 1 there shall be inserted the following Article –

**“1A Application of this Law**

- (1) This Law shall apply only to a continuing security interest in relation to which Schedule 2 to the Security Interests (Jersey) Law 201-<sup>9</sup> provides that the prior law applies.
  - (2) In this Article, ‘continuing security interest’ and ‘prior law’ shall have the same meanings as in that Schedule.”;
- (b) in Article 12(2), for the words “If after the commencement of this Law” there shall be substituted the words “Despite anything in Article 1A, if after the commencement of this Law and before the date on which Part 3 of the Security Interests (Jersey) Law 201- comes into force”;
- (c) in Article 14, after the words “commencement of this Law” there shall be inserted the words “and before the date on which Part 3 of the Security Interests (Jersey) Law 201- comes into force”.

**2 Bankruptcy (Désastre) (Jersey) Law 1990 amended**

The Bankruptcy (Désastre) (Jersey) Law 1990<sup>10</sup> shall be amended as follows –

(a) in Article 1(1), for the definition “security interest” there shall be substituted the following definition –

“ ‘security interest’ means –

- (a) a continuing security interest to which, as referred to in Article 1A of the Security Interests (Jersey) Law 1983<sup>11</sup>, that Law applies; or
- (b) a security interest within the meaning of the Security Interests (Jersey) Law 201-<sup>12</sup>.”;

(b) after Article 10(3) there shall be inserted the following paragraphs –

“(4) Paragraphs (1) and (2) shall not prevent a secured party under a security agreement from exercising, without the consent of the Viscount, and without an order of the court, a power under Part 7 of the Security Interests (Jersey) Law 201- in relation to the relevant collateral.

- (5) Paragraph (3) shall not avoid a transfer of shares made pursuant to a power under Part 7 of the Security Interests (Jersey) Law 201- even if not made to, or with the sanction of, the Viscount.”;
- (c) for Article 14(2) there shall be substituted the following paragraph –
- “(2) Article 6 of the Security Interests (Jersey) Law 1983, or Articles 56 and 59 of the Security Interests (Jersey) Law 201-, shall apply to a security interest to which any movable property of a debtor is subject, being, respectively, a continuing security interest within paragraph (a) of the definition of ‘security interest’ in Article 1(1) or a security interest within paragraph (b) of that definition.”;
- (d) for Article 32(7) there shall be substituted the following paragraph –
- “(7) Where any property of the debtor is subject to a continuing security interest within paragraph (a) of the definition of ‘security interest’ in Article 1(1) or a security interest within paragraph (b) of that definition, the proceeds of sale of the property shall be applied in the manner provided by, respectively, Article 8(6) of the Security Interests (Jersey) Law 1983 or Part 7 of the Security Interests (Jersey) Law 201-.”.

### 3 Companies (Jersey) Law 1991 amended

At the end of Article 159 of the Companies (Jersey) Law 1991<sup>13</sup> there shall be added the following paragraph –

- “(5) Paragraph (3) shall not avoid a transfer of shares made pursuant to a power under Part 7 of the Security Interests (Jersey) Law 201-<sup>14</sup> even if not made to, or with the sanction of, the liquidator.”.

### 4 Building Loans (Jersey) Law 1950 amended

The Building Loans (Jersey) Law 1950<sup>15</sup> shall be amended as follows –

- (a) for the definition of “‘security agreement’ and ‘security interest’” in Article 1 there shall be substituted the following definition –
- “‘security interest’ means, as the case requires, a continuing security interest to which, as referred to in Article 1A of the Security Interests (Jersey) Law 1983<sup>16</sup>, that Law applies or a security interest within the meaning of the Security Interests (Jersey) Law 201-<sup>17</sup>, and ‘security agreement’ has a corresponding meaning.”;
- (b) for Article 15(8) there shall be substituted the following paragraph –
- “(8) In the event of a breach of any of the conditions mentioned in Article 14(3) or any other provision of the security agreement which is by virtue thereof made an event of default, the Minister on behalf of the States shall, without prejudice to any other rights of the States under the security agreement –
- (a) in the case of a security agreement that created a continuing security interest to which, as referred to in Article 1A of the Security Interests (Jersey) Law 1983, that Law applies –



- (i) have the power of sale given by Article 8 of the Security Interests (Jersey) Law 1983, and
  - (ii) may exercise that power in accordance with the provisions of that Article; or
- (b) in the case of a security agreement that created a security interest within the meaning of the Security Interests (Jersey) Law 201-, may exercise the powers of a secured party under that Law.”.

## 5 Drug Trafficking Offences (Jersey) Law 1988 amended

For Article 2(3)(d) of the Drug Trafficking Offences (Jersey) Law 1988<sup>18</sup> there shall be substituted the following sub-paragraph –

- “(d) any sum the payment of which is secured on all or any of the realisable property by a security interest created before the making of the confiscation order, being a continuing security interest to which, as referred to in Article 1A of the Security Interests (Jersey) Law 1983<sup>19</sup>, that Law applies or a security interest within the meaning of the Security Interests (Jersey) Law 201-<sup>20</sup>,”.

## 6 Powers of Attorney (Jersey) Law 1995 amended

The Powers of Attorney (Jersey) Law 1995<sup>21</sup> shall be amended as follows –

- (a) for Article 5(1) and (2) there shall be substituted the following paragraphs –

“(1) In this Article –

‘appropriate Security Interests Law’ means whichever Law applies to the relevant security interest, being the Security Interests (Jersey) Law 1983<sup>22</sup> or the Security Interests (Jersey) Law 201-<sup>23</sup>;

‘bankruptcy’ includes any insolvency proceedings of a similar nature to bankruptcy in any place outside Jersey;

‘foreign law’ means any law other than the law of Jersey;

‘security interest’ means, as the case requires, a continuing security interest to which, as referred to in Article 1A of the Security Interests (Jersey) Law 1983, that Law applies or a security interest within the meaning of the Security Interests (Jersey) Law 201-, and ‘security agreement’ and ‘secured party’ have corresponding meanings.

- (2) Where a power of attorney is expressed to be irrevocable and is given –

- (a) for the purpose of facilitating the exercise of powers of a secured party under the appropriate Security Interests Law in respect of a security interest or of powers given pursuant to a security agreement in respect of a security interest; or

(b) pursuant to, in connection with, for the purpose of, or as ancillary to, security governed by foreign law,

then, so long as the security interest or security is effective, the power of attorney shall not be revoked –

- (i) in any case, by the donor without the consent of the donee;
- (ii) if the donor is an individual, by his or her death, incapacity or bankruptcy; or
- (iii) if the donor is a body corporate, by its bankruptcy or dissolution.”;

(b) in Article 6(1) for the definition of “secured party” there shall be substituted the following definition –

“ ‘secured party’ has the same meaning as in Article 5.”.

## 7 Limited Liability Partnerships (Jersey) Law 1997 amended

For the definition of “charge” in Article 1(1) of the Limited Liability Partnerships (Jersey) Law 1997<sup>24</sup> there shall be substituted the following definition –

“ ‘charge’, except in Articles 8 and 37, includes a security interest, being a continuing security interest to which, as referred to in Article 1A of the Security Interests (Jersey) Law 1983<sup>25</sup>, that Law applies or a security interest within the meaning of the Security Interests (Jersey) Law 201-<sup>26</sup>, and ‘charged’ shall be construed accordingly;”.

## 8 Proceeds of Crime (Jersey) Law 1999 amended

For Article 2(3)(a)(iv) of the Proceeds of Crime (Jersey) Law 1999<sup>27</sup> there shall be substituted the following clause –

“(iv) any sum the payment of which is secured on all or any of the realisable property by a security interest created before the making of the confiscation order, being a continuing security interest to which, as referred to in Article 1A of the Security Interests (Jersey) Law 1983<sup>28</sup>, that Law applies or a security interest within the meaning of the Security Interests (Jersey) Law 201-<sup>29</sup>; and”.

## 9 Taxation (Land Transactions) (Jersey) Law 2009 amended

For the definitions of “secured party”, “security agreement” and “security interest” in Article 1(1) of the Taxation (Land Transactions) (Jersey) Law 2009<sup>30</sup> there shall be substituted the following definition –

“ ‘security interest’ means, as the case requires, a continuing security interest to which, as referred to in Article 1A of the Security Interests (Jersey) Law 1983<sup>31</sup>, that Law applies or a security interest within the meaning of the Security Interests (Jersey) Law 201-<sup>32</sup>, and ‘security agreement’ and ‘secured party’ have corresponding meanings;”.

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**SCHEDULE 2**

(Article 95)

**SAVINGS AND TRANSITIONAL PROVISIONS****1 Interpretation**

In this Schedule –

“amend”, in relation to a continuing security interest, means –

- (a) alter the security interest so that it relates to an obligation not previously secured;
- (b) alter the terms on which the obligation to which the security interest relates is secured so far as those terms relate to that security interest;
- (c) extend or reduce the duration of the security interest; or
- (d) add to or modify the collateral to which the security interest relates;

“continuing security interest” means a security interest that –

- (a) has been created in accordance with the Security Interests (Jersey) Law 1983 on or after 5 April 1983 and before Part 3 comes into force; and
- (b) is still in force when Part 3 comes into force;

“prior law” means the provisions of the Security Interests (Jersey) Law 1983 and of any other law (other than this Law or any enactment made under this Law) that is capable of application to a continuing security interest.

**2 Prior law applies to continuing security interest**

The prior law (and not this Law), as in force from time to time, continues to apply to a continuing security interest unless the continuing security interest is amended after Part 3 comes into force.

**3 Priority as between continuing security interests and certain security interests and assignments**

- (1) A continuing security interest over collateral, being a continuing security interest to which the prior law applies, has priority over any security interest created under this Law over the same collateral, unless the secured party in respect of the continuing security interest otherwise agrees.
- (2) A continuing security interest over collateral that is a receivable, being a continuing security interest to which the prior law applies, has priority

over a new-Law assignment of the same receivable, whether or not the assignment is perfected under this Law, unless the secured party in respect of the continuing security interest otherwise agrees.

- (3) In sub-paragraph (2), “new-Law assignment” means an assignment, after Part 6 comes into force, of a receivable payable by a Jersey company or a Jersey individual.

#### **4 Amendment of continuing security interest**

- (1) If a continuing security interest to which the prior law applies is amended after Part 3 comes into force, the continuing security interest, as so amended, shall be taken to be a security interest created under this Law.
- (2) For the avoidance of doubt, if –
- (a) a continuing security interest has been perfected by the possession or control of collateral;
  - (b) the continuing security interest is amended after Part 3 comes into force;
  - (c) the possession or control existed at the time of that amendment; and
  - (d) the possession or control would be sufficient to perfect a security interest created under this Law in the same collateral,
- the continuing security interest shall be taken to be perfected –
- (i) under this Law;
  - (ii) by the possession or control; and
  - (iii) at the time of the amendment.

#### **5 Prior assignments of receivables**

- (1) Except as provided in this paragraph, the prior law as in force from time to time, and not this Law, shall apply to a prior assignment.
- (2) Article 59(2) shall apply to a prior assignment as soon as that paragraph comes into force, but a reference in that paragraph to perfection includes registration of a prior assignment as referred to in sub-paragraph (3).
- (3) A prior assignment may be registered under Part 8 during or after the transitional period.
- (4) Despite anything in Part 8, such registration shall take effect at the later of the following times –
- (a) when Part 6 comes into force;
  - (b) when the prior assignment is actually registered,
- unless the registration is cancelled before the later of those times.
- (5) Such registration does not affect the operation of sub-paragraph (1) in relation to a prior assignment, but sub-paragraph (6) shall apply to determine questions of priority that relate to the prior assignment.
- (6) As between 2 or more assignments of the same receivable –

- (a) the prior law as in force from time to time, and not this Law, shall apply to determine questions of priority as between or among such assignments as are prior assignments, whether or not one or more of these have been registered under this Law; and
  - (b) this Law shall apply to determine questions of priority as between any prior assignment and any new-Law assignment, according to –
    - (i) whether or not the assignments are perfected assignments, and
    - (ii) the times at which their registrations took effect.
- (7) A perfected security interest created under this Law over collateral that is a receivable has priority over a prior assignment of the same receivable, being an assignment that is not a perfected assignment at the time when the security interest is perfected.
- (8) In this paragraph –
- “before Part 6 comes into force” includes a time before this Schedule is enacted or comes into force;
- “new-Law assignment” means an assignment, after Part 6 comes into force, of a receivable payable by a Jersey company or a Jersey individual;
- “prior assignment” means an assignment, before Part 6 comes into force, of a receivable payable by a Jersey company or a Jersey individual;
- “prior law” means the provisions of any law (other than this Law or any enactment made under this Law) that is capable of application to a prior assignment;
- “transitional period” means the period commencing when Part 8 comes into force and ending when Part 6 comes into force.

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1	<i>chapter 13.225</i>
2	<i>L.6/2011</i>
3	<i>chapter 04.160</i>
4	<i>chapter 13.125</i>
5	<i>chapter 13.250</i>
6	<i>chapter 07.770</i>
7	<i>chapter 15.440</i>
8	<i>chapter 13.775</i>
9	<i>P.88/2011</i>
10	<i>chapter 04.160</i>
11	<i>chapter 13.775</i>
12	<i>P.88/2011</i>
13	<i>chapter 13.125</i>
14	<i>P.88/2011</i>
15	<i>chapter 24.090</i>
16	<i>chapter 13.775</i>
17	<i>P.88/2011</i>
18	<i>chapter 08.580</i>
19	<i>chapter 13.775</i>
20	<i>P.88/2011</i>
21	<i>chapter 04.680</i>
22	<i>chapter 13.775</i>
23	<i>P.88/2011</i>
24	<i>chapter 13.475</i>
25	<i>chapter 13.775</i>
26	<i>P.88/2011</i>
27	<i>chapter 08.780</i>
28	<i>chapter 13.775</i>
29	<i>P.88/2011</i>
30	<i>chapter 24.980</i>
31	<i>chapter 13.775</i>
32	<i>P.88/2011</i>