

# **Personal Property Securities Amendment Act 2004**

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## **Contents**

	Page
1 Title	2
2 Commencement	2
3 How Act arranged	3
4 Part 5 (when buyers or lessees of goods take goods free of unperfected security interests)	3
5 Interpretation	3
6 New section 17A inserted	3
17A Subordinated trusts not security interests	3
7 Meaning of knowledge	4
8 When Act does not apply	4
9 Rights or duties that apply to be exercised in good faith and in commercially reasonable manner	4
10 Temporary perfection of security interest in collateral moved to New Zealand in other cases	5
11 Temporary perfection of security interest in negotiable instrument or investment security returned to debtor	5
12 Perfection where goods in hands of bailee	5
13 Heading to Part 5 amended	5
14 Secured party subrogated to rights of dealer against buyer or lessee	5
15 New section 75A inserted	5
75A Non-proceeds security interest in accounts receivable	5

16	Lien has priority over perfected security interest relating to same goods	6
17	Priority of interests on assignment of account receivable or chattel paper	6
18	Execution creditor has priority over unperfected security interest	6
19	Contents of register	6
20	Data required to register financing statement	6
21	When secured party to notify debtor about registration of financing statement	7
22	New section 169A inserted	7
	169A Restoration of registration	7
23	New heading and sections 170 and 170A substituted	7
	<i>Removal of data from register and correction of errors or omissions</i>	
	170 Removal of data from register	7
	170A Correction of errors or omissions	8
24	Search criteria	8
25	Search purposes, etc	8
26	Secured party to provide certain information relating to security interest	9
27	Certain other prior security interests deemed to be perfected during transitional period	9
28	Consequences of not perfecting certain security interests	9
29	Time of registration of certain prior security interests	9

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Personal Property Securities Amendment Act 2004.
- (2) In this Act, the Personal Property Securities Act 1999 is called “the principal Act”.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**3 How Act arranged**

Section 5(1) of the principal Act is amended by repealing the item relating to Part 5, and substituting the item “Part 5—When buyers or lessees of goods or other collateral take goods or other collateral free of security interest:”.

**4 Part 5 (when buyers or lessees of goods take goods free of unperfected security interests)**

- (1) The heading to section 9 of the principal Act is amended by inserting, after the word “goods” in both places where it appears, the words “or other collateral”.
- (2) Section 9 of the principal Act is amended by inserting, after the word “goods” in each place where it appears, the words “or other collateral”.

**5 Interpretation**

Section 16(1) of the principal Act is amended by inserting, after the definition of **regulations**, the following definition:

“**related company** has the same meaning as in section 2(3) of the Companies Act 1993”.

**6 New section 17A inserted**

The principal Act is amended by inserting, after section 17, the following section:

**“17A Subordinated trusts not security interests**

For the avoidance of doubt, a beneficial interest in personal property held by a creditor (the **senior creditor**) of a person who has been adjudged bankrupt or put into liquidation (the **insolvent debtor**) is not a security interest if—

- “(a) the personal property is property that has been distributed by the Official Assignee under the Insolvency Act 1967 or by a liquidator under the Companies Act 1993 to another creditor of the insolvent debtor (the **subordinated creditor**); and
- “(b) the beneficial interest was created or provided for under the terms of a security (as defined in section 2D of the Securities Act 1978) that is held by the subordinated creditor; and

- “(c) under those terms, the subordinated creditor must hold the personal property on trust for the senior creditor; and
- “(d) the purpose of those terms is to postpone or subordinate the right of the subordinated creditor to the performance of all or any part of an obligation of the insolvent debtor to the right of the senior creditor to the performance of all or any part of another obligation of the insolvent debtor.”

## 7 Meaning of knowledge

- (1) Section 19(1) of the principal Act is amended by adding the following paragraph:

“(c) a government department knows or has knowledge of a fact in relation to a particular transaction when that fact has been brought to the attention of a senior employee of the government department with responsibility for the matters to which the fact relates, under circumstances in which a reasonable person would take cognisance of it.”

- (2) Section 19 of the principal Act is amended by adding the following subsection:

“(3) For the purposes of this section,—

“**government department** means an entity named in Part 1 of Schedule 1 of the Ombudsmen Act 1975

“**organisation** does not include a government department.”

## 8 When Act does not apply

Section 23(c) of the principal Act is amended by omitting the words “except as provided in”, and substituting the words “but without limiting the effect of”.

## 9 Rights or duties that apply to be exercised in good faith and in commercially reasonable manner

The heading to section 25 of the principal Act is amended by omitting the words “commercially reasonable manner”, and substituting the words “accordance with reasonable standards of commercial practice”.

- 10 Temporary perfection of security interest in collateral moved to New Zealand in other cases**  
Section 28(1) of the principal Act is amended by omitting the words “by registration”.
- 11 Temporary perfection of security interest in negotiable instrument or investment security returned to debtor**  
Section 48(b) of the principal Act is amended by omitting the word “delivered”, and substituting the words “gave possession of”.
- 12 Perfection where goods in hands of bailee**  
Section 50(c) of the principal Act is amended by inserting, after the word “bailee”, the words “(being a person who is not the debtor)”.
- 13 Heading to Part 5 amended**  
The heading to Part 5 of the principal Act is amended by inserting, after the word “goods” in both places where it appears, the words “or other collateral”.
- 14 Secured party subrogated to rights of dealer against buyer or lessee**  
Section 65(1)(a) of the principal Act is amended by omitting the expression “section 59”, and substituting the expression “section 58”.
- 15 New section 75A inserted**  
The principal Act is amended by inserting, before section 76, the following section:
- “75A Non-proceeds security interest in accounts receivable**  
“(1) A non-proceeds security interest in accounts receivable that is given for new value has priority over a purchase money security interest in the accounts receivable as proceeds of inventory if a financing statement relating to the security interest in the accounts receivable is registered before the purchase money security interest is perfected or a financing statement relating to it is registered.

“(2) In this section, **non-proceeds security interest** means a security interest in original collateral.

“(3) Sections 73 to 75 are subject to this section.

“Compare: Personal Property Security Act 1993, s 34(6), (7) (Saskatchewan)”.

**16 Lien has priority over perfected security interest relating to same goods**

The heading to section 93 of the principal Act is amended by omitting the word “perfected”.

**17 Priority of interests on assignment of account receivable or chattel paper**

Section 102(1)(b) of the principal Act is amended by inserting, after the words “the assignor”, the words “(including a defence by way of a right of set-off)”.

**18 Execution creditor has priority over unperfected security interest**

(1) Section 103(1) of the principal Act is amended by omitting the words “who has seized”, and substituting the words “in any”.

(2) Section 103 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) In this section, **time of execution** means,—

“(a) if the collateral is seized by an execution creditor or on an execution creditor’s behalf, the time of seizure; or

“(b) in any other case, the time when a charging order or a garnishee order is made.”

**19 Contents of register**

Section 140(d) of the principal Act is amended by omitting the words “or authorised”.

**20 Data required to register financing statement**

(1) Section 142(e) of the principal Act is amended by omitting the words “or authorized”.

(2) Section 142 of the principal Act is amended by adding, as subsection (2), the following subsection:

“(2) Subsection (1) does not limit section 149.”

**21 When secured party to notify debtor about registration of financing statement**

Section 148 of the principal Act is amended by inserting, after the words “financing change statement”, the words “, or on whose behalf a financing statement or financing change statement has been registered,”.

**22 New section 169A inserted**

The principal Act is amended by inserting, after section 169, the following section:

**“169A Restoration of registration**

- “(1) The Registrar may restore a registration if it appears to the Registrar that, due to a clerical error made by the Registrar, the registration has been incorrectly discharged or removed.
- “(2) A registration restored under subsection (1) must be regarded as having continued in force throughout the period during which it was incorrectly discharged or removed as if it had not been so discharged or removed.”

**23 New heading and sections 170 and 170A substituted**

The principal Act is amended by repealing the heading above section 170 and section 170, and substituting the following heading and sections:

*“Removal of data from register and correction of errors or omissions*

**“170 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) on the registration of a financing change statement discharging or partially discharging the registration; or
  - “(c) if the Registrar is satisfied that the data is frivolous or vexatious.
- “(2) The Registrar must, before he or she makes a decision under subsection (1)(c), give the secured party notice to show cause, within 10 working days of the date on which the notice is given, why the data is not frivolous or vexatious.
- “(3) If the secured party fails within 10 working days of the date on which the notice is given to show cause to the Registrar’s sat-

isfaction why the data is not frivolous or vexatious, the Registrar may, in the Registrar's discretion, remove the data from the register.

- “(4) If data is removed from the register under subsection (1)(c), the Court may, on the application of the secured party, make an order directing that the data be restored to the register if it is satisfied that the data is neither frivolous nor vexatious.
- “(5) The Court may make any other orders that it thinks proper for the purpose of giving effect to an order under subsection (4).
- “(6) The Registrar must restore the data to the register in accordance with a court order made under subsection (4) as soon as reasonably practicable after receiving the order.

“Compare: Personal Property Security Act 1993, s 46 (New Brunswick)

#### “170A Correction of errors or omissions

The Registrar may, with the consent of the secured party, correct any clerical error or omission made by the Registrar in a registration.”

#### 24 Search criteria

Section 172(e) of the principal Act is amended by omitting the words “or authorised”.

#### 25 Search purposes, etc

- (1) Section 173(c) of the principal Act is amended by inserting, after subparagraph (ii), the following subparagraph:
- “(ia) establishing whether to provide credit to, or to obtain a guarantee or an indemnity from, a related company of the company named in the search or of the company with an interest in the personal property described in the search.”.
- (2) Section 173(c) of the principal Act is amended by adding the following subparagraph:
- “(iv) establishing whether to invest in, with, or through, a related company of the company named in the search or of the company with an interest in the personal property described in the search.”.



- 26 Secured party to provide certain information relating to security interest**  
Section 177(1)(c) of the principal Act is amended by omitting the words “personal property” in the second place where they occur, and substituting the word “collateral”.
- 27 Certain other prior security interests deemed to be perfected during transitional period**  
Section 196 of the principal Act is amended by omitting the words “any other prior security interest”, and substituting the words “every other prior security interest (if any)”.
- 28 Consequences of not perfecting certain security interests**  
Section 198 of the principal Act is amended by adding, as subsection (2), the following subsection:  
“(2) If a prior security interest that is deemed to be an unperfected security interest under subsection (1) is perfected after the close of the transitional period, that perfection is only effective from the time of that perfection.”
- 29 Time of registration of certain prior security interests**  
Section 199(a) and (b) of the principal Act is amended by omitting the word “time” in both places where it appears, and substituting in each case the word “date”.

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**Legislative history**

6 April 2004

Divided from Business Law Reform Bill (Bill  
56-2), third reading

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