



High Court (Personal Property Securities) Amendment Rules 2021

Patsy Reddy, Governor-General

Order in Council

At Wellington this 19th day of April 2021

Present:

The Right Hon Jacinda Ardern presiding in Council

These rules are made under section 148 of the Senior Courts Act 2016—

- (a) on the advice and with the consent of the Executive Council; and
- (b) with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee continued under section 155 of the Senior Courts Act 2016 (of whom at least 1 was a Judge of the High Court).

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Rules

1 Title

These rules are the High Court (Personal Property Securities) Amendment Rules 2021.

2 Commencement

These rules come into force on 20 May 2021.

3 Principal rules

These rules amend the High Court Rules 2016.

4 Rule 17.1 amended (Interpretation)

In rule 17.1, insert in their appropriate alphabetical order:

register means the personal property securities register kept under the Personal Property Securities Act 1999

secured party has the same meaning as in section 16(1) of the Personal Property Securities Act 1999

5 New rules 17.66A to 17.66D inserted

After rule 17.66, insert:

17.66A Personal property securities register must be checked

- (1) If personal property has been, or is to be, seized under a sale order, the entitled party must, before or after the property is seized, and in accordance with the directions (if any) of a Registrar,—
 - (a) take all necessary steps to determine whether a financing statement relating to the property has been registered on the register; and
 - (b) if a financing statement has been registered,—
 - (i) promptly notify its content and the secured party's registered name and address to the Registrar; and
 - (ii) authorise the Registrar to serve the secured party at the address provided.
- (2) When the Registrar is notified, the Registrar must promptly notify the person named as the secured party in that statement—
 - (a) that the enforcing officer may sell the property, in accordance with rules 17.63 to 17.79, if—
 - (i) the judgment debt remains unpaid; and
 - (ii) no claim has been made in respect of the property by a person other than the liable party; and
 - (iii) no court order directs otherwise; and

- (b) that the secured party has the rights set out in rule 17.66B.

17.66B Claim by secured party

- (1) A secured party who has received a notification under rule 17.66A(2) may, by interlocutory application made not later than 10 working days after the notification, apply for a court order protecting the secured party's security interest in the personal property.
- (2) The secured party must serve a copy of the application on the entitled party, the liable party, and the enforcing officer who seized the property.
- (3) For the sole purpose of service under subclause (2), the Registrar may release to the secured party, free of charge, the address for service of the entitled party and the liable party as recorded on the court file.
- (4) If the court file does not include an address for service for the liable party, the secured party may serve the liable party at the last known address of that party as recorded on the register.
- (5) The filing of an application under subclause (1) stays any proceeding in the High Court or any other court in respect of the claim, or of any damage arising out of the enforcement of the sale order, other than under rule 17.66C(c) or (d).

17.66C Court's power to deal with claim

A Judge may, on application under rule 17.66B(1),—

- (a) order a sale of the whole or part of the personal property on any payment terms the Judge thinks just; and
- (b) direct the application of the proceeds of the sale in the manner and on the terms the Judge thinks just; and
- (c) hear and determine any dispute between the entitled party and the secured party or between either of them and the enforcing officer relating to any claim for damages arising, or capable of arising, out of the enforcement of the sale order; and
- (d) make whatever order in respect of the claim and the costs of the application as the Judge thinks just.

17.66D Purchaser of personal property obtains good title

The purchaser of personal property sold by order of the court under rule 17.66C(a), or sold when the secured party has not applied for an order under rule 17.66B(1), obtains good title to the property free of all ownership interests and other proprietary interests held in the property before the sale.

6 Rule 17.67 amended (Disposal of proceeds)

In rule 17.67, insert as subclause (2):

- (2) This rule is subject to—
 - (a) sections 108 to 112 of the Insolvency Act 2006; and

(b) sections 251 and 252 of the Companies Act 1993.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on 20 May 2021, amend the High Court Rules 2016.

The purpose of these changes is to clarify the relationship between sale orders enforcing a court judgment and the Personal Property Securities Act 1999.

Under *new rule 17.66A*, an entitled party must take all necessary steps to check the personal property securities register to ascertain whether a financing statement is registered against personal property that has been, or is to be, seized and sold under a sale order. The Registrar, if notified that such a financing statement exists, must advise the secured party of the legal position.

Under *new rule 17.66B*, the secured party may apply to the court for an order appropriately protecting the secured party's security interest in the personal property.

Under *new rule 17.66C*, a Judge may order the sale of the property, and decide how the proceeds are to be distributed and, at the same time, determine any other disputes between the entitled party and the secured party, or between either of them and the enforcing officer.

Under *new rule 17.66D*, the purchaser of property obtains good title to the property free of interests in the property before it was sold.

Rule 17.67 is amended to provide that disposal of sale proceeds is subject to certain provisions of the Insolvency Act 2006 and the Companies Act 1993.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 22 April 2021.

These rules are administered by the Ministry of Justice.