

STATES OF JERSEY



DRAFT SECURITY INTERESTS (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 31st May 2013
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT SECURITY INTERESTS (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

REPORT

Background

The Security Interests (Jersey) Law 2012 (“the Law”), which replaces the existing law governing security interests in intangible movable property, was adopted by the States on 19th July 2011, received Royal Assent on 10th July 2012 and was registered by the Royal Court on 27th July 2012. It is intended that the Law will come into force as amended by the Security Interests (Amendment of Law) (Jersey) Regulations 201- (“the draft Regulations”), made under Articles 93 and 95 of the Law. The Regulations are designed to supplement, and clarify certain provisions in Parts 1, 2, 4 and Schedule 2 of the Law.

Consultation

Consultation has been underway on the draft Regulations since the Law was first lodged for debate in 2011. Consultation has been conducted through a working group containing a large number of industry experts in banking and finance law. These are the individuals in industry who will ultimately make use of and advise upon the Law when it has been brought into force. The work undertaken by the working group has been supplemented by the advice of Professor Sir Roy Goode Q.C., a world leading expert on securities law, who advised on the policy behind the Law. In summary, there has been significant consultation with those members of industry who are most concerned in this area of law.

The Draft Regulations

The draft Regulations make amendments to each of the individual Parts of the Law which are felt to improve the Law before it is brought into force. This includes the following amendments:

Article 4 is expanded so as to make the Law applicable to a wider range of interests in intangible movable property which are connected to Jersey because the property is situated in Jersey, the relevant instrument is governed by Jersey law or the person owing the relevant obligations is a Jersey company or Jersey individual.

A power is inserted to prescribe by Order security interests to which the Law is not to apply, or is to apply only to the extent prescribed and the provision enabling a person to take a security interest in its own obligation is expanded to enable a company incorporated by shares to take a security interest from its shareholders in its own shares. This will enable certain exemptions to apply to parts of industry who wish an alternative method of perfection to that previously provided, with the detail of such exemptions being provided in an Order.

Security interests in a ship or aircraft or a share in a ship or aircraft have been added to the list of interests excluded from the Law, because they will be dealt with separately under specific provisions either in this Law or in another Law.

Consequently, various changes have been made to the priority rules, particularly those relating to deposit accounts and security interests in order to deal with priority conflicts not adequately covered by the existing provisions. Other changes are designed to protect rights of set-off of banks and intermediaries.

A new Schedule 2 deals with transitional provisions affecting security interests in force when the Law comes into force and continuing in force thereafter.

It is intended that the new Law shall be brought into force in a staged manner in order to permit the registration provisions to go live before certain other substantive provisions. Significant work has been performed on the register by the organisation hosting this important facility, namely the team comprising the Deputy Registrar of Companies at the Jersey Financial Service Commission.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations, made under Articles 93 and 95 of the Security Interests (Jersey) Law 2012, make amendments to that Law that are to come into force on the same day as Article 93 of that Law.

Regulation 1 specifies that the Security Interests (Jersey) Law 2012 may be referred to in these Regulations as the “principal Law”. (It is referred to as “SIL” in this explanatory note.)

Regulation 2 amends Article 1 of SIL –

- (a) to add definitions of “cash proceeds”, “continuing security interest”, “individual”, “intellectual property”, “knowledge”, “perfected by control” and “perfected by possession”;
- (b) to amend the definitions of “financing change statement”, “financing statement”, “intangible movable property”, “perfected by registration”, “security interest” and “value”;
- (c) to specify in detail the meanings of the words “to register”, “registered” and “registration”.

Regulation 3 inserts Article 1A (containing a revised definition of “security interest”) into SIL in order to make it clear that the form of the transaction that creates an interest is not crucial to determining whether the interest is a security interest and that it does not matter who owns the collateral in deciding whether a security interest has been created.

Regulation 4 repeals Article 3(6) of SIL, which deals with a secured party’s control of a certificated investment security held in a settlement system.

Regulation 5 replaces Article 4 of SIL, which is the provision that specifies the security interests, and assignments of receivables, that SIL is to apply to. The new provision specifies in greater detail the rights and interests that are to be security interests for the purposes of SIL.

Regulation 5 also inserts a new Article 4A into SIL, which allows an Order to be made that specifies provisions of SIL that are not to apply to security interests specified by the Order.

Regulation 6 repeals Article 5(2) of SIL, as this provision is to be replaced by paragraph 4 of the new Schedule 2 of SIL (also being substituted by these Regulations). The new paragraph 4 expressly allows parties to a security interest created before SIL comes into force to apply SIL to the security interest, but only as between those parties.

Regulation 7 substitutes Article 6 of SIL to clarify that a reference to a deposit account is to one held by the relevant depositor at the relevant bank, to remove a reference to deposit accounts held by an intermediary (so that the Article will refer only to securities accounts so held), and to make it clear that a company may take a security interest from a shareholder in shares in the company.

Regulation 8 substitutes Article 8 of SIL to provide additionally that SIL does not apply to any interest in the nature of a lien created by the articles of association of a company nor to an interest in a ship or aircraft.

Regulation 9 amends Article 9 of SIL to ensure that an Order made under Article 4(c) of SIL (i.e. an Order that adds interests or transactions to which SIL applies) is not undone by the exclusion of transactions by Article 9 of SIL. The amendment also clarifies the list of assignments and mortgages (etc.) of aircraft that are excluded from the operation of SIL. The amendment sets out separately (instead of in the list of transactions excluded) a paragraph that excludes, from the operation of SIL, transactions prescribed by Order.

Regulation 10 substitutes Article 12 of SIL to clarify that one must look at SIL as in force at a particular time when deciding whether a security interest created at that time is to be created in accordance with SIL (and in accordance with what rules it is to be created under SIL) – and not just at the 2 situations before and after SIL comes into force.

Regulation 11 amends Article 29 of SIL to add a rule about priority between security interests that are perfected by attachment. In the case of those security interests, the order of attachment decides priority. Regulation 11 also adds to Article 29 of SIL a clarification about the timing of registration, possession or perfection in relation to proceeds of collateral under a security interest.

Regulation 12 substitutes Article 30 of SIL to add special rules about priorities as to security interests held by banks (or other deposit-taking institutions) over deposit accounts or held by intermediaries over securities accounts.

Regulation 12 also adds Article 30A to SIL to make it clear that any right of set-off that a bank (or other deposit-taking institution) has against a person who is a secured party in relation to a deposit account with the bank (or institution) is not affected by the relevant security interest except in certain cases.

Regulation 12 also adds Article 30B to make it clear that any right of set-off that an intermediary has against a person who is a secured party in relation to a securities account with the intermediary is not affected by the relevant security interest except in certain cases.

Regulation 13 substitutes Article 33 of SIL to refer to further advances to be secured over collateral instead of referring (less accurately) to future advances so secured. The new Article 33 also makes it clear that a further advance is one that is not so much made pursuant to the relevant security agreement as secured by that agreement, and described in that agreement as so secured, if it is to be regarded as a further advance for the purposes of Article 33.

Regulation 13 also substitutes Article 34 of SIL to make it clear that the special rule giving priority to certain purchase money security interests does not “trump” the special rules of priority set out in Article 30 of SIL.

Regulation 14 substitutes Schedule 2 to SIL to set out different rules to apply to security interests, and assignments, that are already in force when SIL comes into force and which continue in force afterwards, including rules as to priority as between those security interests and assignments and security interests and assignments created under SIL.

Regulation 15 sets out the short title of these Regulations and provides for them to come into force on the same day as Article 93 of SIL, being the principal Article under which they are made.



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SCHEDULE

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Jersey

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 93 and 95 of the Security Interests (Jersey) Law 2012¹, have made the following Regulations –

1 Interpretation

In these Regulations, “the Law” means the Security Interests (Jersey) Law 2012².

2 Article 1 amended

In Article 1 of the Law –

(a) the following definitions shall be inserted in appropriate alphabetical order –

“ ‘cash proceeds’ means proceeds in the form of money, cheques or drafts, or in the form of deposit accounts in banks or similar deposit-taking institutions;

‘continuing security interest’ means a security interest that –

(a) has been created in accordance with the Security Interests (Jersey) Law 1983³ on or after 5th April 1983 and before Part 3 comes into force; and

(b) is still in force when Part 3 comes into force;

‘individual’ includes members of any group of individuals acting together;

‘intellectual property’ includes any copyright, patent, trademark, design right and trade secret and any other intellectual property of any description;

‘knowledge’ has the same meaning as in the Supply of Goods and Services (Jersey) Law 2009⁴;

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

‘perfected by possession’, in relation to a security interest in a documentary intangible, means perfected by virtue of the secured party’s taking possession of the relevant negotiable instrument or of the certificate embodying the right to the relevant negotiable security;”;

- (b) for the definitions of “financing change statement”, “financing statement”, “intangible movable property”, “perfected by registration”, “security interest” and “value” the following definitions shall be substituted –

“ ‘financing change statement’ means data transmitted to the registrar, in accordance with Article 62 and other provisions set out by or under this Law, in order to amend a financing statement or to discharge a registration;

‘financing statement’ means data transmitted to the registrar in accordance with Article 62 and other provisions set out by or under this Law (and, for the avoidance of doubt, includes a financing change statement where the context so requires);

‘intangible movable property’ and ‘intangible’ (as a noun) mean movable property other than goods, and include cash (being cash that is not money) and licences and quotas having commercial value, whether or not they are transferable;

‘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;

‘security interest’ has the meaning set out in Article 1A;

‘value’, in the phrase ‘for value’ and in references to the giving of value –

- (a) means something sufficient to support an onerous contract, that is, a *contrat à titre onéreux*; and
- (b) includes an antecedent debt or liability;”;

- (c) for the definition of “to register” the following definitions shall be substituted –

“ ‘to register’, in relation to a financing statement, means enter in the register;

‘registered’, in relation to a security interest or an assignment of a receivable (for example, in the expression ‘registered security interest’), refers to the fact that the security interest or assignment is the subject of a registered financing statement;

‘registration’, in relation to a security interest or an assignment of a receivable (for example, in the expression ‘registration of a security interest’), refers to the registration of a financing statement in respect of the security interest or assignment;”.

3 Article 1A inserted

After Article 1 of the Law the following Article shall be inserted –

“1A Meaning of ‘security interest’

- (1) In this Law, ‘security interest’ means an interest in intangible movable property, being an interest that, under a security agreement, secures payment or secures the performance of an obligation.
- (2) For the purposes of paragraph (1), the following do not matter –
 - (a) the form of the transaction that creates or provides for the security interest;
 - (b) the person who has title to the relevant collateral.
- (3) Without limiting paragraph (1), in this Law, ‘security interest’ includes the interest of a secured party under a transfer of title by way of security, under a mortgage, pledge, or contractual lien, or under any other encumbrance that is by way of security.”.

4 Article 3 amended

Article 3(6) of the Law shall be repealed.

5 Articles 4 and 4A substituted

For Article 4 of the Law the following Articles shall be substituted –

“4 Application of Law

This Law applies (subject to anything provided by or under Article 4A or 95 or by Schedule 2) only to the following –

- (a) a security interest created, after Part 3 comes into force, in any of the following –
 - (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 securities accounts with an intermediary where the accounts are maintained in Jersey,
 - (iv) one or more deposit accounts maintained in Jersey,
 - (v) any intellectual property created under the law of Jersey other than intellectual property registered on a register of intellectual property in Jersey,

- (vi) all or any rights, title and interest of any person in and to a security interest created under this Law or a continuing security interest (or all or any rights, title and interest of any person under or in relation to any security agreement relating to a security interest created under this Law or a continuing security interest) whether or not the grantor of the security interest or continuing security interest is a Jersey company or a Jersey individual,
 - (vii) all or any rights, title and interest of any person in and to any intangible movable property (whether or not such intangible movable property is situated in Jersey) where such intangible movable property is held on trust and the governing law of such trust is Jersey law,
 - (viii) all or any rights, title and interest of any person in and to any intangible movable property situated in Jersey where such intangible movable property is held on trust (whether or not the governing law of such trust is Jersey law),
 - (ix) any intangible movable property not referred to in any of sub-paragraphs (i) to (viii) where such intangible movable property consists of all or any rights, title and interest in and to any obligations owed under any contract, agreement, or instrument, that is governed by Jersey law (whether or not the person who owes such obligations is a Jersey company or a Jersey individual),
 - (x) any intangible movable property not referred to in any of sub-paragraphs (i) to (viii) where such intangible movable property consists of all or any rights, title and interest in and to any obligations owed under any contract, agreement, or instrument, that is governed by foreign law and the person who owes such obligations is a Jersey company or a Jersey individual,
 - (xi) all or any rights and interest of any partner in any partnership established or incorporated under Jersey law (where 'partnership' includes, without limitation, a partnership established under the customary law of Jersey, a limited partnership established under the Limited Partnerships (Jersey) Law 1994⁵, a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997⁶, an incorporated limited partnership established under the Incorporated Limited Partnerships (Jersey) Law 2011⁷ and a separate limited partnership established under the Separate Limited Partnerships (Jersey) Law 2011⁸),
 - (xii) any intangible movable property not referred to in any of sub-paragraphs (i) to (xi) where such intangible movable property is situated in Jersey;
- (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.

4A Exceptions to application of Law to certain security interests

Security interests may be prescribed to which, in all or any prescribed circumstances, any prescribed provision of this Law shall not apply or shall apply only to the extent prescribed.”.

6 Article 5 amended

Article 5(2) of the Law shall be repealed.

7 Article 6 substituted

For Article 6 of the Law the following Article shall be substituted –

“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 depositor at the bank or institution may take a security interest from the depositor in the bank’s or institution’s own such obligation;
- (b) an intermediary that has an obligation to deliver or transfer securities, or money, cheques or drafts, to the holder of a securities account with the intermediary may take a security interest from the holder of the account in the intermediary’s own such obligation; and
- (c) a company incorporated with a share capital may take a security interest from any of its shareholders in its own shares.”.

8 Article 8 substituted

For Article 8 of the Law the following Article shall be substituted –

“8 Interests excluded

- (1) Except as provided by any Order made under Article 4(c), this Law shall not apply to or in respect of, or affect, any of the following interests –
 - (a) a lien, or other encumbrance or interest in movable property, created by any other enactment or by the operation of any rule of law;
 - (b) a lien created by the articles of association of a company;
 - (c) any right of set-off, netting, or combination of accounts;

(d) any interest in a ship or aircraft, or any share in a ship or aircraft.

(2) This Law shall not apply to or in respect of, or affect, any interest prescribed by Order for the purposes of this Article.”.

9 Article 9 amended

In Article 9 of the Law –

- (a) the existing text shall be numbered as paragraph (1);
- (b) in paragraph (1) (as so numbered) for the words “This Law shall not apply” the words “Except as provided by any Order made under Article 4(c), this Law shall not apply” shall be substituted;
- (c) for paragraph (1)(h) (as so numbered), the following sub-paragraph shall be substituted –
 - “(h) any –
 - (i) assignment,
 - (ii) mortgage, or
 - (iii) assignment, by way of security, of a mortgage, of a ship or aircraft or of any share of a ship or aircraft;”;
- (d) paragraph (1)(l) (as so numbered) shall be deleted;
- (e) after paragraph (1) (as so numbered), the following paragraph shall be added –
 - “(2) This Law shall not apply to an interest created or provided for by any transaction prescribed by Order for the purposes of this Article.”.

10 Article 12 substituted

For Article 12 of the Law the following Article shall be substituted –

“12 Exclusive application of this Law

No security interest to which Part 3 of this Law applies at any time may be created under the law of Jersey at that time except in accordance with this Law as in force at that time.”.

11 Article 29 amended

In Article 29 of the Law –

- (a) in paragraph (1)(d) for the words “except in the case set out in sub-paragraph (f)” the words “except in the cases set out in sub-paragraphs (f) and (j)” shall be substituted;
- (b) after paragraph (1)(i) the following sub-paragraph shall be added –
 - “ ;

- (j) priority among security interests perfected by attachment is to be determined by the order of attachment of the security interests.”;
- (c) after paragraph (2) the following paragraphs shall be added –
 - “(3) For the purposes of paragraph (1)(j), a security interest in after-acquired property, being a security interest that attaches as referred to in Article 19(2), shall be taken to have attached at the time of the making of the security agreement that provided for the security interest in the after-acquired property.
 - (4) For the purposes of this Article, the time of registration, possession, or perfection, in relation to a security interest in original collateral is also the time of registration, possession, or perfection, in relation to the same security interest in relation to proceeds.”.

12 Articles 30, 30A and 30B substituted

For Article 30 of the Law the following Articles shall be substituted –

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

- (1) This Article applies only to conflicting security interests in –
 - (a) an investment security represented by a certificate (a ‘certificated investment security’);
 - (b) a securities account; or
 - (c) a deposit account.
- (2) Despite paragraphs (3), (5) and (6), a security interest in a deposit account at a bank, or other deposit-taking institution, where the security interest is perfected by control in the circumstances referred to in Article 3(3)(a) has priority over a security interest held in the deposit account by the bank or other deposit-taking institution.
- (3) Despite paragraphs (5) and (6), a security interest held by a bank or other deposit-taking institution in a deposit account maintained at the bank or other institution has priority over a security interest held by another secured party in the same deposit account.
- (4) Despite paragraphs (5) to (8), a security interest in a securities account maintained by an intermediary, where the security interest is perfected by control in the circumstances referred to in Article 3(4)(a) has priority over a security interest held in the securities account by the intermediary.
- (5) A security interest in respect of which a secured party has possession or control of a certificated investment security, control of a securities account or control of a deposit account has priority over a security interest (in the same investment security or account)

in respect of which a secured party does not have that possession or control.

- (6) Conflicting security interests under which each secured party has possession or control of a certificated 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.
- (7) Conflicting security interests granted by an intermediary in a securities account rank equally if under those security interests no secured party has control.
- (8) Despite paragraphs (5), (6) and (7), a security interest held by an intermediary in a securities account maintained with the intermediary has priority over a conflicting security interest held by another party.
- (9) In cases to which none of paragraphs (2) to (8) applies, priority between conflicting security interests in the same certificated investment security, the same securities account or the same deposit account is governed by Article 29.

30A Bank's right of set-off not affected

Nothing in this Part affects any right of set-off that a bank, or other deposit-taking institution, may have against a person that is a secured party in respect of a security interest in a deposit account maintained at the bank or other institution unless –

- (a) the security interest is perfected by control in the circumstances referred to in Article 3(3)(a); and
- (b) the set-off is based on a claim against a person that is the grantor or obligor in respect of the security interest.

30B Intermediary's right of set-off not affected

Nothing in this Part affects any right of set-off that an intermediary may have against a person that is a secured party in respect of a security interest in a securities account maintained by the intermediary unless –

- (a) the security interest is perfected by control in the circumstances referred to in Article 3(4)(a); and
- (b) the set-off is based on a claim against a person that is the grantor or obligor in respect of the security interest.”.

13 Articles 33 and 34 substituted

For Articles 33 and 34 of the Law the following Articles shall be substituted –

“33 Further advances and priorities in relation to further advances

- (1) A security agreement may provide that the obligations secured under it may include obligations as to further advances.

- (2) A security interest shall not be extinguished by repayment 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 further 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;
 - ‘further advance’ means an advance that is –
 - (a) secured by a security agreement;
 - (b) described by the terms of that agreement to be so secured; and
 - (c) made after an initial advance secured by the agreement.

34 Priority of purchase money security interest in intangible movable property and proceeds

- (1) A security interest in collateral that is 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.
- (2) However, paragraph (1) does not apply in a case where Article 30 applies.”.

14 Schedule 2 substituted

For Schedule 2 to the Law the Schedule set out in the Schedule to these Regulations shall be substituted.

15 Citation and commencement

- (1) These Regulations may be cited as the Security Interests (Amendment of Law) (Jersey) Regulations 201-.
- (2) These Regulations shall come into force on the same day as Article 93 of the Law.

SCHEDULE

(Regulation 14)

“SCHEDULE 2

(Article 95)

1 Interpretation

In this Schedule –

‘any law’ includes customary law and any enactment;

‘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 –

- (a) in paragraphs 2, 3 and 4, the provisions of the Security Interests (Jersey) Law 1983⁹ and of any law (other than this Law or any enactment made under this Law) that is capable of application to a continuing security interest, as those provisions are in force from time to time; or
- (b) in paragraph 6, 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, as those provisions are in force from time to time.

2 Prior law applies to continuing security interest

The prior law (and not this Law) shall continue to apply to a continuing security interest.

3 Adding new collateral means a new security interest is created

(1) This paragraph applies if –

- (a) persons have entered into an agreement (‘agreement B’) and they are already parties to another agreement (‘agreement A’) that created a continuing security interest;
- (b) agreement B is entered into after Part 3 comes into force and purports to extend the continuing security interest to collateral to which the continuing security interest did not apply immediately before Part 3 came into force; and

(c) agreement A did not (immediately before the time when Part 3 came into force) provide for the extension of the continuing security interest to after-acquired property of a class within which the collateral referred to in clause (b) falls.

(2) If this paragraph applies –

- (a) the continuing security interest shall not be affected by agreement B;
- (b) the security interest to which the collateral referred to in subparagraph (1)(b) is subject shall not be the continuing security interest but a security interest created under this Law; and
- (c) the prior law (and not this Law) shall continue to apply to the continuing security interest.

4 Parties may agree otherwise in relation to themselves

- (1) Paragraphs 2 and 3 do not prevent the parties to a continuing security interest from agreeing that, in their relations with each other, this Law (and not the prior law) shall apply to the continuing security interest.
- (2) To the extent of such an agreement, and despite paragraphs 2 and 3, in the parties' relations with each other –
 - (a) this Law shall apply to the continuing security interest; and
 - (b) the prior law shall not apply to the continuing security interest.

5 Priority as between continuing security interests and certain security interests and assignments

- (1) A continuing security interest over collateral has priority over any security interest created under this Law in 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 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.

6 Prior assignments of receivables

- (1) Except as provided in this paragraph, the prior law (and not this Law) shall apply to a prior assignment.
- (2) Paragraph (2) of Article 59 shall apply to a prior assignment on and from the day on which that paragraph and Part 6 are both in force, but a reference in that paragraph to perfection includes registration

- of a financing statement in respect of a prior assignment as referred to in sub-paragraph (3).
- (3) After Part 8 comes into force, and whether or not Part 6 is in force, a financing statement may be registered under Part 8 in respect of a prior assignment.
- (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 financing statement is actually registered,
- but shall not take effect if discharged 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 (and not this Law) shall apply to determine questions of priority as between or among such assignments as are prior assignments, whether or not financing statements have been registered under this Law in respect of one or more of those assignments; 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 the registrations of financing statements in respect of them 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.”.

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- ¹ *L.24/2012*
 - ² *L.24/2012*
 - ³ *chapter 13.775*
 - ⁴ *chapter 05.800*
 - ⁵ *chapter 13.500*
 - ⁶ *chapter 13.475*
 - ⁷ *chapter 13.370*
 - ⁸ *chapter 13.780*
 - ⁹ *chapter 13.775*