

House of Representatives

Supplementary Order Paper

Tuesday, 3 April 2001

Business Law Reform Bill

Proposed amendments

Hon Paul Swain, in Committee, to move the following amendments:

Clause 40Q

To insert, after the definition of **inventory** (after line 16 on page 20), the following definition:

“new value has the same meaning as in section 16(1) of the Personal Property Securities Act 1999

Clause 40S

To omit *new section 30(1)* (lines 7 to 13 on page 21), and substitute the following subsection:

“(1) This section applies to a receiver of the property of a grantor that is a company, other than a company in liquidation at the time of the receiver’s appointment, and who was appointed under a security agreement that created or provided for a security interest that—

“(a) is over all or any part of the company’s accounts receivable and inventory or all or any part of either of them; and

“(b) is not a purchase money security interest; and

“(c) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).”

To omit from *subclause (2)(a)* the word “charge” (line 16 on page 21), and substitute the words “security interest”.

Clause 44: new section 9B

To omit *new subsection (2AA)(a)* (lines 31 to 34 on page 25), and substitute the following paragraph:

- “(a) all members and beneficiaries of each registered super-annuation scheme (other than those members and beneficiaries that, in the opinion of the Government Actuary, are not likely to be materially affected by the proposed transfer referred to in that subsection); and

To omit from *new subsection (2A)(a)* the words “all members and beneficiaries of the scheme” (lines 5 and 6 on page 26), and substitute the words “the members and beneficiaries described in **subsection (2AA)(a)**”.

Schedule: new Schedule 1

To omit *new clause 9(b)(i)* of the Seventh Schedule of the Companies Act 1993 (lines 13 to 19 on page 30), and substitute the following subparagraph:

- “(i) have priority over the claims of any person under a security interest to the extent that the security interest—
 - “(A) is over all or any part of the company’s accounts receivable and inventory or all or any part of either of them; and
 - “(B) is not a purchase money security interest; and
 - “(C) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and

To insert in *new clause 9* of the Seventh Schedule of the Companies Act 1993, after the word “**inventory**,” (line 24 on page 30), the words “**new value**,”.

To omit *new section 51(2)(b)* of the Corporations (Investigation and Management) Act 1989 (lines 9 to 13 on page 31), and substitute the following paragraph:

- “(b) claims in respect of preferential payments made under section 312 of the Companies Act 1993 (as applied by section 55), in the case of—
 - “(i) proceeds of an account receivable that is subject to—
 - “(A) a non-purchase money security interest; or
 - “(B) a security interest that does not arise from the transfer of the account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of

- the account receivable secures payment or performance of an obligation); or
- “(ii) proceeds of inventory that are subject to a non-purchase money security interest.”

To omit *new section 51(4) to (6)* of the Corporations (Investigation and Management) Act 1989 (lines 15 to 38 on page 31), and substitute the following subsections:

- “(4) If a statutory manager of a corporation sells or otherwise disposes of any shares in a body corporate formed and registered under section 50(2)(a), any property or assets of which are subject to a security interest, other than a security interest of the kind described in **subsection (6)**, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the shares.
- “(5) If a statutory manager of a corporation sells or otherwise disposes of any property or assets of a body corporate formed and registered under section 50(2)(a), being property or assets subject to a security interest, other than a security interest of the kind described in **subsection (6)**, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets.
- “(6) The kind of security interest referred to in this section is a security interest that—
- “(a) is over all or any part of the corporation’s accounts receivable and inventory or all or any part of either of them; and
- “(b) is not a purchase money security interest; and
- “(c) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).
- “(7) In this section, **account receivable, inventory, new value, non-purchase money security interest, proceeds, purchase money security interest, and security interest** have the same meanings as in the Personal Property Securities Act 1999.”

To omit *new section 42(2)(c)* of the Goods and Services Tax Act 1985 (lines 18 to 31 on page 32), and substitute the following paragraph:

- “(c) if a person is an unincorporated body, on the appointment of a receiver on behalf of any person, the amount of tax payable—

- “(i) ranks immediately after any preferential claims for any wages or other sums payable to or on account of any servant, worker, apprentice, or articulated clerk; and
- “(ii) ranks in priority over any claims of any person under a security interest to the extent that the security interest—
 - “(A) is over all or any part of the unincorporated body’s accounts receivable and inventory or all or any part of either of them; and
 - “(B) is not a purchase money security interest; and
 - “(C) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and
- “(iii) must be paid accordingly out of any accounts receivable and inventory that are subject to the security interest (or their proceeds).”

To insert in *new section 42(4)* of the Goods and Services Tax Act 1985 (line 34 on page 32), after the word “**inventory**,” (line 34 on page 32), the words “**new value**,”.

To insert in *new section 42(5)* of the Goods and Services Tax Act 1985, after the words “a body” (line 39 on page 32), the words “or an unincorporated body”.

To omit *new section 13(1)(a)* of the Industrial and Provident Societies Amendment Act 1952 (lines 21 to 25 on page 33), and substitute the following paragraph:

- “(a) any accounts receivable and inventory (or their proceeds) coming into the hands of the receiver who is appointed on behalf of persons who have, over those assets, a security interest that—
 - “(i) is not a purchase money security interest; and
 - “(ii) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); or

To insert in *new section 13(5)* of the Industrial and Provident Societies amendment Act 1952, after the word “**inventory**,” (line 32 on page 33), the words “**new value**,”.

To omit the item relating to section 11(1) of the Layby Sales Act 1971 (lines 7 to 10 on page 34), and substitute the following items:

Omit from section 11(1) the words “a floating charge” and substitute the words “the kind of security interest described in **subsection (1A)**”.

Insert, after section 11(1):

“(1A) The kind of security interest referred to in subsection (1) is a security interest that—

“(a) is over all or any part of the seller’s accounts receivable and inventory or all or any part of either of them; and

“(b) is not a purchase money security interest; and

“(c) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).”

To insert in *new section 11(4)* of the Layby Sales Act 1971, after the word “**inventory**,” (line 12 on page 34), the words “**new value**,”.

To omit the items relating to the Legal Services Act 1991 (line 21 on page 34 to line 10 on page 35).

To omit *new section 104PPA(1)* of the Property Law Act 1952 (lines 13 to 19 on page 36), and substitute the following subsection:

“(1) This section applies to a mortgagee, to which this Part applies, of the property of a company, other than a company in liquidation at the time the mortgagee became such a mortgagee, if the mortgagee became such a mortgagee under a security interest that—

“(a) is over all or any part of the company’s accounts receivable and inventory or all or any part or either of them; and

“(b) is not a purchase money security interest; and

“(c) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).”

To insert in *new section 104PPA(5)* of the Property Law Act 1952, after the word “**inventory**,” (line 26 on page 36), the words “**new value**,”.

To omit the item relating to section 183(4)(b) of the Radiocommunications Act 1989 (line 36 on page 36 to line 6 on page 37), and substitute the following item:

Repeal section 183(4)(b) and substitute:

“(b) if the person is a company, on the liquidation of the company or on the appointment of a receiver on behalf of the holder of any debenture given by the company secured by a charge over any property of the company or on possession being taken on behalf of that debenture

holder of that property, the amount of the payment, despite anything in any other enactment,—

“(i) ranks immediately after amounts payable to the Commissioner of Inland Revenue in accordance with section 167(2) of the Tax Administration Act 1994; and

“(ii) so far as the assets of the company available for payment of general creditors are insufficient to meet the amount of the payment required by section 149 or section 157 or section 164 or section 177(2)(c) or section 178(2)(c) of this Act, subject to section 167(2)(b) of the Tax Administration Act 1994, ranks in priority over any claims of any person under a security interest to the extent that the security interest—

“(A) is over all or any part of the company’s accounts receivable and inventory or all or any part of either of them; and

“(B) is not a purchase money security interest; and

“(C) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and

“(iii) must be paid accordingly out of any accounts receivable or inventory comprised in or subject to that security interest (or their proceeds).”

To insert in *new section 183(5)* of the Radiocommunications Act 1989, after the word “**inventory**,” (line 9 on page 37), the words “**new value**,”.

To omit *new section 134(2)* of the Reserve Bank of New Zealand Act 1989 (lines 19 to 28 on page 37), and substitute the following subsection:

“(2) If the statutory manager of a registered bank sells or otherwise disposes of any property or assets of that bank under section 132(1), being property or assets subject to a security interest, other than a security interest of the kind described in **subsection (6)**, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets.”

To omit *new section 134(4) to (6)* (line 30 on page 37 to line 18 on page 38), and substitute the following subsections:

“(4) If a statutory manager of a registered bank sells or otherwise disposes of any shares in a body corporate formed and registered under section 132(2)(a), any property or assets of which

are subject to a security interest, other than a security interest of the kind described in **subsection (6)**, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the shares.

- “(5) If a statutory manager of a registered bank sells or otherwise disposes of any property or assets of a body corporate formed and registered under section 132(2)(a), being property or assets subject to security interest, other than a security interest of the kind described in **subsection (6)**, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets.
- “(6) The kind of security interest referred to in this section is a security interest that—
- “(a) is over all or any part of the bank’s or body corporate’s (as the case may be) accounts receivable and inventory or all or any part of either of them; and
 - “(b) is not a purchase money security interest; and
 - “(c) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).
- “(7) In this section, **account receivable, inventory, new value, purchase money security interest, proceeds, and security interest** have the same meanings as in the Personal Property Securities Act 1999.”

Schedule: new Schedule 2

To omit the item relating to the Legal Services Regulations 1991 (lines 10 to 17 on page 42).

Explanatory note

Most of the amendments in this Supplementary Order Paper amend the replacement wording for floating charges, which will effectively cease to exist under the new personal property securities regime.

The replacement wording for floating charges appears in a number of Acts that contain provisions about the payment of preferential creditors, for example, the Receiverships Act 1993 and the Companies Act 1993.

The purpose of the amendment is to effectively exclude a transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable

secures payment or performance of an obligation) from the relevant preferential creditor regime. If those types of transfers are not expressly excluded, they would be included in the assets that are available to pay preferential creditors.

Some of the other amendments to *new section 42(2)(c) and (5)* of the Goods and Services Tax Act 1985 are needed in order to preserve amendments to those provisions that were made by the Personal Property Securities Amendment Act 2000.

The items relating to the Legal Services Act 1991 and the Legal Services Regulations 1991 are omitted as a result of the new Legal Services Act 2000.
