

Schedule 2—Creating an effective security interest

Personal Property Securities Act 2009

Item 1 – Section 10 (definition of ADI)

1. Item 1 repeals and replaces the definition of ‘ADI’ in section 10 of the *Personal Properties Securities Act 2009* (the PPS Act). The current definition of ADI (which is short for authorised deposit-taking institution) states that it has the same meaning as in the *Banking Act 1959*.
2. The amendment widens the definition of ‘ADI’ to also include authorised foreign banks and the Reserve Bank of Australia (RBA). Consequently, provisions in the PPS Act that apply to ADIs and ADI accounts will also apply to authorised foreign bank and RBA accounts.
3. The PPS Act contains various provisions which apply in respect of ADI accounts. For example, the PPS Act provides that:
 - An ADI may take a security interest in an ADI account that is kept with the ADI.
 - A security interest held by an ADI in an ADI account with the ADI has priority over any other security interest in the ADI account (section 75).
4. The existing section 10 definition provides that an ‘ADI’ has the same meaning as in the *Banking Act 1959* (Cth). A bank account is only an ADI account if it is held with an entity that is authorised to carry on banking business under the *Banking Act 1959*. As a result, foreign banks, even if authorised to carry on banking business under the equivalent laws of another jurisdiction, do not fall within the scope of the PPS Act as neither are recognised entities within the *Banking Act 1959* (Cth).
5. The existing definition also does not reference RBA accounts. Under section 8 of the *Banking Act 1959*, both the Reserve Bank and ADIs can carry on banking business. The amendment to section 10 reflects that the Reserve Bank, while not being incorporated into the definition of an ADI under the *Banking Act 1959*, can also carry on banking business. This allows the Reserve Bank to perfect automatically by control over accounts held with it, similar to other banks.
6. The amendment means that the above provisions will now also apply to bank accounts with authorised foreign banks and RBA accounts.

Item 2 – Section 10 (definition of *description*)

7. Item 2 repeals and replaces the definition of ‘description’ in section 10 of the PPS Act by referring the reader to new section 15A which provides the meaning of *description* of personal property.
8. Under the existing definition of ‘description’, collateral is described by item or class. The amended definition now requires a description of personal property (including collateral and proceeds) by ‘item or kind’, or as ‘all present and after-acquired property’ or ‘all present and after-acquired property, except specified items or kinds of property’. While

no specific criteria are provided, the description must be sufficient to enable the personal property to be identified. See further Item 6.

Item 3 – Section 10 (definition of *financial product*)

9. Item 3 repeals and replaces the definition of ‘financial product’ in section 10 to remove reference to the *Corporations Act 2001* (Cth) in the context of the definition of investment instrument.
10. The existing definition of ‘financial product’ cross-references the definition for ‘investment instrument’ contained in the *Corporations Act 2001*. The amended and self-contained definition of ‘financial product’ simplifies the operation of the PPS Act by ensuring that users of the PPS Act are not required to refer to external legislation and regulations to obtain the full definition of a ‘financial product’. The new definition of investment instrument is referenced in Item 5 in this Schedule.
11. The definition is also amended to remove the exclusion of cash as a financial product. While consistent with the Hague Securities Convention, the exclusion is inconvenient where, for example, proceeds from an intermediated security may come in the form of dividends or other cash entitlements. Under the existing definition, a security interest over an intermediated security can be perfected by control, while a security interest over proceeds in the forms of cash entitlements held in an account with an intermediary cannot due to the exclusion. For example, a secured party may perfect by control over an intermediated security which then gives rise to proceeds in cash. The security interest over those cash proceeds would be unperfected, unless the secured party went to the effort of perfecting by registration as well.
12. Even in circumstances where a secured party does register its security interest over cash proceeds, the security interest over those proceeds may have a lower priority than the security interest in the intermediated security.
13. Removal of the cash exclusion from the definition of ‘financial product’ allows cash entitlements to be perfected by control and removes the requirement for secured parties to register for the full benefit of their security.

Item 4 – Section 10 (definition of *future advance*)

14. Item 4 repeals the definition of ‘future advance’ from section 10 of the PPS Act.
15. The term ‘future advance’ is only used under existing sections 58 and 18(4) of the PPS Act. The term has been replaced with the term ‘payment or performance of an obligation’ throughout the PPS Act and it is no longer necessary for the PPS Act to provide a specific definition for ‘future advance’ in section 10.

Item 5 – Section 10 (definition of *investment instrument*)

16. Item 5 repeals and replaces the definition of ‘investment instrument’ in section 10 of the PPS Act.
17. The new definition defines investment instrument based on an articulation of principles rather than with reference to a list of financial products that could be considered an investment instrument. The new definition provides that an investment instrument means an obligation, share or similar right of participation in an entity that:
 - is one of a class or series, or by its terms is divisible into a class or series; and

- is of a type dealt in or traded on a recognised market, or is issued as a medium for investment.
18. A definition based on principles reduces the complexity of the definition and the risk that new types of investment instruments are not captured by the definition in future.
 19. The amendment also reflects that investment instruments are usually securities and other financial instruments that are traded or can be traded on a financial market and broadly aligns with the definition of ‘securities’ provided in the *UNCITRAL Model Law on Secured Transactions*.
 20. The new definition retains the following exclusions in existing paragraphs (l), (m) and (n) of the current definition:
 - documents of title;
 - intermediated securities; and
 - negotiable instruments.
 21. The item removes the exclusion in current paragraph (k) ‘creation or transfer (including a successive transfer) of a right to payment in connection with interests in land, if the writing evidencing the creation or transfer does not specifically identify that land’. This exclusion has also been removed from section 13A to simplify the PPS Act (see Schedule 1, Item 11).
 22. The new definition also provides for exclusions to be via an instrument prescribed by the Personal Properties Securities Regulations 2023 (the Regulations) see para (f).

Item 6 – Section 15

Section 15 – Meaning of *intermediated security* and related terms

23. Item 6 repeals and replaces section 15 of the PPS Act to simplify the meaning of ‘intermediated security’ and related terms.
24. Subsection 15(1) currently defines an ‘intermediated security’ as the ‘rights’ of a person who has a securities account with an intermediary. This was intended to be in reference to a person’s rights in relation to that securities account or in relation to the financial products that are recorded in that securities account, however the language of the subsection is not explicit. Item 6 amends the definition to make clear that an intermediated security is the rights of person in whose name an intermediary maintains a securities account, to the extent those rights are in respect of that securities account and the financial products that are credited to that account.
25. The definition has been amended to make it clear that shares and other securities held through the CHESS system are investment instruments, not intermediated securities.
26. Subsection 15(2) currently defines an intermediary by reference to the following types of licences that may be held by an intermediary:
 - A person who holds an Australian financial services licence;
 - A person who operates a clearing and settlement facility under an Australian CS facility licence within the meaning of the *Corporations Act 2001*; and

- A person who holds a foreign licence to maintain a securities account.
27. The issue with this existing definition is evident in the current reference to a person who holds an ‘Australian CS facility licence’. This reference was included to cover holdings in the ASX’s computerised settlement system (CHES). However, the main functions of the CS facility operated by the ASX are to maintain a sub-register of quoted securities on behalf of each ASX-listed company and to provide a mechanism for parties to transact in those securities. In this sense, ASX-listed securities held through CHES are not indirectly held because ASX does not act as an intermediary. ASX does not hold pools of securities as custodian for individual investors. Rather, CHES functions as a register for the entities that issue the securities, as an agent of that issuer.
 28. Item 6 also amends subsection 15(2) to remove the references to licences from the current definition of an ‘intermediary’. This amendment is intended to ensure the definition of intermediary focuses on the intermediary’s functions rather than the regulatory regime that governs it. The definition now states that an intermediary is a person who maintains securities accounts for the holders of intermediated securities, or both for such holders and on the person’s own behalf. This revised definition aligns with the Hague Securities Convention and focuses on the fact that the intermediary maintains securities account for others, or for others as well as itself, and is acting in that capacity.
 29. Item 6 retains the existing exclusion in subsection 15(3) which states that an intermediary does not include a central bank. With the revised approach to the definition of intermediary in new subsection 15(2), existing subsections 15(5)-(6) have been removed as they are no longer necessary.
 30. Item 6 also includes the meaning of a securities account in subsection 15(4) to mean an account to which interests in financial products may be credited or debited, as per the existing definition. As a consequence of removing reference to an Australian CS facility in the existing definition of an ‘intermediary’, the definition of ‘securities account’ in existing subsection 15(7) has also been amended to remove current paragraph 15(7)(b) as it relates to an Australian CS facility licence and is no longer required.
 31. The amendments to the definition of ‘financial product’ in section 10 (Item 3 of this Schedule) to remove the exclusion of cash means cash is a financial product which may be credited or debited to a securities account.

Section 15A – Meaning of *description* of personal property

32. Item 6 repeals and replaces ‘description of personal property (including collateral and proceeds)’ in section 10 to ‘meaning of description of personal property’ as referenced in new section 15A.
33. Item 6 amends the definition so that the description required to describe personal property is at a standard that is sufficient to enable the collateral to be identified. This can be by item or kind or a description as ‘all present and after-acquired property’ or ‘all present and after-acquired property, except specified items or kinds of personal property’.
34. An ‘item’ is a specific, individually distinguishable piece of collateral. For example, ‘the original painting of ‘Blue Poles’ by Jackson Pollock’.

35. 'Kind' is a broad description that may encompass multiple individual pieces of collateral or a 'type' of collateral. For example, 'goods', or 'art owned by the National Gallery of Australia in 2019'.
36. New subsection 15A(2) states that the description of personal property in a financing statement or financing change statement, does not have to be sufficient to enable the property to be identified, subject otherwise to the Act. The note under the new subsection 15A(2) references the requirement in section 153 that the description of collateral and proceeds for financing statements and financing change statements should be done in accordance with the requirements set out in the Regulations.

Item 7 – Subsections 18(4) and (5)

37. Item 7 repeals and replaces subsections 18(4) and 18(5). Current section 18 outlines general rules about security agreements and security interests. Current subsections 18(4) and (5) provide security agreements can cover future advances and reasonable expenses in relation to the enforcement of the security interests respectively. These subsections are now replaced with a new broader subsection 18(4) which provide for an obligation to make a payment or other obligation arising after the security interest is granted. Current subsection 18(5) is no longer required as it is now covered by Division 2 of Schedule 4 (General enforcement principles; see Item 1 of Schedule 4).

Item 8 – Paragraph 19(2)(a)

38. Item 8 amends paragraph 19(2)(a) of the PPS Act to remove ' , or the power to transfer rights in the collateral to the secured party'.
39. Paragraph 19(2)(a) of the PPS Act provides that a security interest can attach to collateral if the grantor has a right in the collateral, or if the grantor has the power to transfer rights in the collateral to a secured party. The amended provision now provides that a security interest will only attach to collateral when the grantor has 'rights in the collateral'.
40. If the grantor of a security interest is taken to have sufficient rights in collateral under the PPS Act to grant security over it to another secured party, then they are taken to also have the 'power to transfer rights'. Given that the phrase 'the power to transfer rights' adds nothing to the phrase 'rights in the collateral', the phrase 'the power to transfer rights' has no role to play in the structure of the PPS Act and has been removed.

Item 9 – Subsections 19(5) and (6)

41. Item 9 repeals and replaces subsection 19(5) and (6) of the PPS Act, other than the note to subsection 19(6).
42. The existing subsection 19(5) provides circumstances where a grantor would have sufficient rights in collateral to support attachment even if the grantor did not have ownership at common law and only had a possessory interest in the collateral. This subsection is limited by confining the circumstances to goods provided under a PPS lease, consignment or a conditional sale agreement (including on retention of title).
43. The existing subsection 19(6) provides that existing subsection (5) does not limit any other rights the grantor may have in the goods. This has been omitted because it is now redundant.
44. The revised subsection 19(5) now clarifies that it applies to any situation where the grantor has possession of the collateral but the secured party holds title to the collateral.

The revised subsection 19(6) also assists with clarifying the point in time at which attachment occurs under a security interest.

45. The PPS Act, through subsection 19(5), treats the grantor, for the purposes of the PPS Act, as if it were the owner of the property in these circumstances and allows the grantor sufficient rights to grant security over the whole of the property, not only their possessory interest, back to the secured party and to other secured creditors. The amendment ensures that the Act treats all security interests consistently. It better achieves the PPS Act's policy of looking at the commercial substance of the transaction rather than its form and fulfils the publicity objective of perfecting a security interest.

Item 10 – Subparagraph 20(1)(b)(i)

46. Item 10 amends subparagraph 20(1)(b)(i) of the PPS Act by inserting '(other than as a result of seizure or repossession)' after 'collateral'.
47. Subparagraph 20(1)(b)(i) does not currently provide guidance on whether a security interest is enforceable against third parties where the secured party obtains possession of the collateral by seizure or repossession. The absence of the words 'other than as a result of seizure or possession' may allow secured parties to perfect their interest through a grantor's involuntary act of having the collateral seized (as opposed to surrendering the collateral to a secured party).
48. Allowing possession through seizure or repossession, for the purposes of enforcement against third parties, risks defeating the writing requirements of subsection 20(2) (see Item 11 of this Schedule). This is because a secured party that has failed to reduce its security agreement to writing (and so does not have a security agreement that is enforceable against third parties), would automatically rectify that lapse when they enforce their security interest by seizing the collateral. This potential circularity is removed by the amendment.
49. The revised subparagraph 20(1)(b)(i) clarifies that possession of collateral through seizure or repossession will not be sufficient for a security interest to be enforceable against a third party.
50. The amendment also aligns subparagraph 20(1)(b)(i) with paragraph 21(2)(b) which provides that possession will not be sufficient to perfect a security interest if the possession is as a result of seizure or repossession.

Item 11– Subsection 20(2)

51. Item 11 repeals and replaces subsection 20(2) of the PPS Act.
52. The amended provision removes the specific requirements for how collateral should be described in a security agreement to allow a security interest in that collateral to be enforceable.
53. The existing subsection 20(2) provides that a security agreement must be evidenced by writing in order to cover collateral. It is not clear whether the writing needs to evidence the existence of the security agreement, or only the terms of the agreement. A security agreement will usually contain terms that address a range of issues, such as the:
 - identity of the parties;
 - identity of the collateral;

- grant of the security interest; or
- enforcement triggers and remedies.

54. The amendment specifies that under subsection 20(2), a security interest will be enforceable against third parties if:

- the security interest is evidenced by writing;
- the written evidence includes a description of the collateral; and
- the written evidence is signed by the grantor or adopted or accepted by an act or omission of the grantor that can reasonably be interpreted as evidencing an intention to adopt or accept the written evidence of the security agreement.

Item 12 – Subsection 20(3)

55. Item 12 repeals and replaces the words ‘subparagraph (2)(a)(i)’ with ‘subparagraph 2(c)(i)’ to ensure the correct cross reference to the agreement being signed by the grantor in the new subsection 20(2) (see Item 11 of this Schedule).

Item 13 – Subsections 20(4) and (5)

56. Item 13 repeals subsections 20(4) and (5) of the PPS Act.

57. In addition to the requirements of current subsection 20(2), subsection 20(4) outlines the additional information required if the collateral is described using the term ‘consumer or commercial property’. Subsection 20(5) relates to the description required if the collateral is inventory.

58. Repealing these provisions means security agreements have fewer requirements as to how consumer property, commercial property and inventory must be described. This provides greater flexibility to both the grantor and secured party as to how collateral will be referenced in security agreements. Grantors who hold or lease personal property as inventory are also no longer constrained by subsection 20(5).

59. The requirements of the revised subsection 20(2) continue to apply to consumer property, equipment and inventory.

Item 14– Subparagraphs 21(2)(c)(iii)

60. Item 14 amends subparagraph 21(2)(c)(iii) to replace ‘instrument;’ with ‘instrument.’.

61. This minor editorial amendment is necessary due to the repeal of subparagraphs 21(c)(iv), (v) and (vi) of the PPS Act by Item 15 of this Schedule.

Item 15 – Subparagraphs 21(2)(c)(iv), (v) and (vi)

62. Item 15 repeals subparagraphs 21(2)(c)(iv), (v) and (vi).

Subparagraph 21(2)(c)(iv) – Negotiable instruments in electronic form

63. Subparagraph 21(2)(c)(iv) provides that negotiable instruments not evidenced by a certificate are able to be perfected by control.

64. Australian law does not currently recognise a negotiable instrument that is only in electronic form.
65. Negotiable instruments not evidenced by a certificate are an anomaly in the PPS Act and do not align with how the PPS Act defines and treats negotiable instruments. Under general law, negotiable instruments are by their nature physical instruments and must be transferable by delivery. Even if electronic negotiable instruments were recognised, there is no clear reason why a security interest over a negotiable instrument should be able to be perfected by control, when that option is not available for other payment intangibles.
66. The deletion of subparagraph 21(2)(c)(iv) ensures consistency with the rest of the PPS Act and aligns the PPS Act with the understanding of negotiable instruments under general law.
67. Refer to Item 20 of this Schedule for the corresponding repeal of section 29 of the PPS Act.

Subparagraph 21(2)(c)(v) – Letters of credit

68. Subparagraph 21(2)(c)(v) provides that a security interest in a right evidenced by a letter of credit can be perfected by control, if the letter of credit requires that the letter be presented on claiming payment or requiring the performance of an obligation.
69. This allows a security interest in a right evidenced by a letter of credit, if it is perfected by control, to defeat other perfected security interests, even though the security interest will not be visible to outsiders.
70. The subparagraph was intended to maintain consistency with international letter of credit practices in ensuring finality of payment to assignees of letter of credit proceeds. However, the subparagraph does not achieve this objective as its application is limited to letters of credit ‘that [state] that the letter of credit must be presented on claiming payment’. This creates a different priority regime depending on whether the letter of credit was certified or electronic.
71. Further, allowing control as a means of perfection detracts from the PPS Act’s publicity objective. If other secured parties are not made aware of a security interest then in an insolvency scenario the proceeds of a letter of credit could easily be dispersed before an assignee asserts its priority rights.
72. Repealing the requirement means that that a letter of credit will no longer be able to be perfected by control but may still be perfected by possession and registration.
73. The repeal of this subparagraph simplifies the operation of the PPS Act and better reflects the PPS Act’s publicity objective.

Subparagraph 21(2)(c)(vi) – Satellites and other space objects

74. Subparagraph 21(2)(c)(vi) allows security interests in satellites and other space objects to be perfected by control. While the Act defines what ‘control’ means regarding other ‘controllable’ property, it does not provide a definition of what it means to ‘control’ a satellite or other space object. Although the Convention on International Interests in Mobile Equipment (the Convention) provides for how security interests in certain high-value mobile equipment can be established, the Convention does not use the term

‘control’ over a property in the same way the PPS Act uses it, meaning to ‘perfect a security interest’. It is therefore appropriate to repeal the paragraph.

75. The amendment means that security interests over satellites and other space objects will no longer be able to be perfected by control but may still be perfected by possession and registration.

Item 16 – Paragraph 22(2)(b)

76. Item 15 repeals and replaces paragraph 22(2)(b) of the PPS Act. This paragraph currently provides that the relevant temporary perfection period for goods in the possession of a bailee ends at the end of the day the secured party takes possession of the negotiable document of title to goods.
77. The temporary perfection period provides secured parties in certain circumstances the benefit of perfection for a short period, during which they can take steps to permanently perfect their security interest.
78. The amendment provides that the period will now end at the end of the period of 10 business days after the day of issue of the document, or at the end of the day the secured party takes possession of the document, whichever is earlier. The amended provision keeps the temporary perfection period to a timeframe that gives adequate time for a secured party to perfect a security interest but also does not undermine the publicity function of perfection and is consistent with temporary perfection timeframes in other parts of the Bill (see Item 22 of this Schedule).

Item 17 – Subsections 22(3) and (4)

79. Item 17 repeals subsection 22(3) and (4) of the PPS Act. The current application of these subsections means that when a secured party does not perfect its security interest within the required time, the consequences vary. In most cases, the temporary perfection simply expires at the end of the period, and the security interest becomes unperfected at that time. However, under current section 22, the security interest is taken to have not been perfected at all during the temporary perfection period.
80. The amendment allows temporarily perfected security interests under the section to expire at the end of the temporary perfection period provided for in the provision (if not perfected in the meantime by another method), rather than being taken to have not been perfected at all during the temporary perfection period.
81. To ensure consistency, the same rule will apply in all cases of temporary perfection, so if the secured party fails to perfect its security interest prior to the end of the temporary perfection period, then temporary perfection will expire but remain valid for the temporary perfection period.

Item 18 – Section 23

Section 23 – Guide to this Part

82. Item 18 repeals and replaces the Guide to Part 2.3 of the PPS Act.
83. The Guide is revised to reflect amendments to the possession and control provisions in Part 2.3, including to provisions relating to chattel paper, negotiable instruments not evidenced electronically, possession of investment instruments, and letters of credit.

Item 19 – Subsections 24(4) to (6)

84. Item 18 repeals subsections 24(4) to (6) of the PPS Act as these provisions are now redundant due to other amendments.
85. Section 24 sets out when a party has possession of personal property.
86. Current subsections 24(4) and (6) are concerned with the possession of certain negotiable instruments and investment instruments, respectively. For consistency with new rules relating to control of intermediated securities and investment instruments (refer below to Item 19) there is no further need for any special rules regarding the possession of negotiable instruments or investment instruments.
87. Current subsection 24(5) deals with the possession of chattel paper that is evidenced electronically. This subsection is being repealed. as a consequence of removing the concept of chattel paper from the PPS Act entirely. The concept of chattel paper was imported into the PPS Act from the Canadian and New Zealand Personal Property Security Acts. However, chattel paper is not recognised by Australian law outside of the PPS Act and there is little or no use of the term ‘chattel paper’ within Australia.
88. Given the concept of chattel paper has been removed from the PPS Act, rules regarding how to possess chattel paper which is evidenced by an electronic record are no longer needed. See Items 27-33 of Schedule 1.
89. Current subsection 24(6) deals with possession of investment instruments. This is now redundant as this is now dealt with by new subsection 27(4).

Item 20 – Sections 26 to 29

90. Item 20 repeals and replaces sections 26 and 27 to align the methods for perfecting control over an intermediated security and investment instrument.
91. The PPS Act has two sets of methods for perfecting by control depending on whether the property is an intermediated security (current section 26) or an investment instrument (current section 27). Parties have difficulty identifying whether the collateral is an intermediated security or an investment instrument in order to follow the correct process for perfection by control. The amendments to sections 26 and 27 align the mechanisms for control over both intermediated securities and investment instruments and enable the interest to be perfected by control even in circumstances where the classification of the instrument is incorrect.

Section 26 – Control of intermediated securities

92. The amendment to section 26 provides that an intermediated security can only be perfected by control if the intermediated security cannot be dealt with without the consent of the secured party.
93. The current concept of perfection by control reflects the position under article 8 of the Uniform Commercial Code (US) and the Canadian Securities Transfer Acts, on which the perfection by control mechanism is based. However, the policy settings in article 8 and the Securities Transfer Acts were likely focused on establishing the rights of the parties to transactions involving intermediated securities, rather than on the publicity objective of perfection under their secured transactions laws.

94. Under existing section 26, it is almost impossible for a third party to ascertain who has control of an intermediated security (as opposed to the notion of possession, where the question of who possesses certain collateral is easily answered). It is, therefore, appropriate that the publicity function of perfection be adhered to as practicably as possible.
95. The amendment provides for an overarching principle whereby a secured party may perfect by control if the intermediated security cannot be dealt with without the consent of the secured party. For example, consent of the secured party would include a situation where the secured party makes instructions.
96. The revised subsections 26(2) and (3) which provide for control by maintenance of securities account and control by agreement not to deal without consent, respectively, are the only circumstances in which a secured party will have control of an investment instrument for the purposes of subsection 26(1).
97. These mechanisms for perfecting by control over an intermediated security will better satisfy the publicity objective of the PPS Act as it is currently difficult for a third party to ascertain who has control of an intermediated security.

Section 27 – Control of investment instruments

98. The amendment to section 27 provides that an investment instrument can only be perfected by control if the investment instrument cannot be dealt with except with the consent of the secured party and subsections (2), (3) or (4) apply.
99. Similar to intermediated securities, the current mechanisms for perfecting by control over an investment instrument do not clearly satisfy the publicity objective of the PPS Act as it is difficult for a third party to ascertain who has control of an investment instrument.
100. The amended provisions mean a secured party will have control of an investment instrument for the purposes of subsection 27(1) only in circumstances in which subsections 27(2), (3) or (4) apply. These circumstances are when:
 - the secured party, or another person on the secured party's behalf, is registered as the owner of the investment instrument on the issuer's books (subsection 27(2)); or
 - there is an agreement in force between the secured party and the issuer that the investment instrument cannot be dealt with except with the consent of the secured party (if the investment instrument is not evidenced by a certificate) (subsection 27(3)); or
 - the secured party, or another person on the secured party's behalf, has possession of the certificate if the investment instrument is evidenced by a certificate (subsection 27(4)).
101. For the purposes of paragraph 27(2)(b), a secured party may have control even if the person who is registered as the owner of the instrument retains the right to, for example, make substitutions for the instruments or to originate instructions to the issuer of the instrument. This reflects that control does not affect certain rights, such as a shareholder's right to vote at an AGM.

Sections 28 and 29

102. Item 20 repeals sections 28 and 29 of the PPS Act as they are no longer required.
103. Section 28 currently provides that a secured party does not have control of a right evidenced by a letter of credit, unless the issuer or nominated person has consented to assigning the proceeds of the letter of credit to the secured party. The inclusion of section 28 in the Act is unnecessary as there are other methods of perfection (by registration or possession) and priority rules that adequately address how letters of credit are treated. Refer to Item 15 of this Schedule regarding the related repeal of subparagraph 21(2)(c)(v).
104. Section 29 currently provides how perfection by control of negotiable instruments not evidenced by a certificate could occur. The section is no longer necessary as negotiable instruments in electronic form are no longer recognised under the PPS Act. Item 15 of this Schedule contains further information about negotiable instruments not evidenced by certificate.

Item 21 – Section 30

105. Item 21 repeals and replaces the words ‘5 business days’ with ‘10 business days’.
106. Section 30 is a guide to Part 2.4 which refers to specific rules for attachment and perfection. The guide notes Division 3 deals with perfection and temporary perfection and notes that a registration may be temporarily perfected for 5 business days. This needs to be updated to 10 business days to be consistent with the amendment outlined in Item 22 of this Schedule.

Item 22– Subsection 33(2)

107. Item 22 amends subsection 33(2) of the PPS Act.
108. The amendment allows a security interest to be temporarily perfected for 10 business days rather than the 5 business days that currently apply in subsection 33(2).
109. The temporary perfection period provides secured parties, in certain circumstances, the benefit of perfection for a short period, during which they can take steps to permanently perfect their security interest. The amended provision keeps the temporary perfection period to a timeframe that gives adequate time for a secured party to perfect a security interest but also does not undermine the publicity function of perfection.

Item 23- Subsection 33(3)

110. Item 23 repeals subsection 33(3) of the PPS Act.
111. The repeal of subsection 33(3) has the effect that the temporary perfection period ends after the prescribed time of 10 business days, under subsection 33(2).

Item 24 – Subparagraphs 34(1)(c)(i) and (ii)

112. Item 24 amends subparagraphs 34(1)(c)(i) and (ii) of the PPS Act.
113. The amendment allows a security interest to be temporarily perfected for 10 business days rather than the 5 business days that apply in the existing provision.

114. The temporary perfection period provides secured parties, in certain circumstances, the benefit of perfection for a short period, during which they can take steps to permanently perfect their security interest. The amended provision keeps the temporary perfection period to a timeframe that gives adequate time for a secured party to perfect a security interest but also does not undermine the publicity function of perfection.

Item 25 – Subsection 34(2)

115. Item 25 repeals subsection 34(2).

116. The repeal of subsection 34(2) has the effect that the temporary perfection period ends after the prescribed time of 10 business days, under new subsection 34(1) (see Item 24 of this Schedule).

Item 26 – Subsection 35(1) (heading)

117. Item 26 repeals the current heading in subsection 35(1) which refers to a security interest being temporarily perfected. There is no longer a need for this heading given amendments to section 35 (see Items 27 and 28 of this Schedule) – the primary heading to section 35 is sufficient. This simplifies the Bill and is consistent with modern drafting practices.

Item 27 – Subsection 35(2)

118. Item 27 amends subsection 35(2) of the PPS Act.

119. The amendment allows a security interest to be temporarily perfected for 10 business days rather than the 5 business days that apply under the existing provision.

120. The temporary perfection period provides secured parties, in certain circumstances, the benefit of perfection for a short period, during which they can take steps to permanently perfect their security interest. The amended provision keeps the temporary perfection period to a timeframe that gives adequate time for a secured party to perfect a security interest but also does not undermine the publicity function of perfection.

Item 28 – Subsection 35(3)

121. Item 28 repeals subsection 35(3) of the PPS Act.

122. The repeal of subsection 35(3) has the effect that the temporary perfection period ends after the prescribed time of 10 business days.

Item 29 – Subsection 36(1) (heading)

123. Item 29 repeals the heading of subsection 36(1).

124. There is no longer a need for this heading given amendments to section 36 (see items 28 and 29 below) – the primary heading to section 36 is sufficient. This simplifies the Bill and is consistent with modern drafting practices

Item 30 – Subsection 36(2) Item 30 amends subsection 36(2) of the PPS Act.

125. The amendment allows a security interest to be temporarily perfected for 10 business days rather than the 5 business days that apply under the existing provision.

126. The temporary perfection period provides secured parties, in certain circumstances, the benefit of perfection for a short period, during which they can take steps to

permanently perfect their security interest. The amended provision keeps the temporary perfection period to a timeframe that gives adequate time for a secured party to perfect a security interest but also does not undermine the publicity function of perfection.

Item 31 – Subsection 36(3)

127. Item 31 repeals subsection 36(3).

128. The repeal of subsection 36(3) has the effect that the temporary perfection period ends after the prescribed time of 10 business days, as per amended subsection 36(2) (see Item 30 of this Schedule).

Item 32– Section 56

Section 56 – How a security interest is continuously perfected

129. Item 32 repeals and replaces section 56 of the PPS Act.

130. Currently, section 56 explains when a security interest can be continuously perfected by different methods at different times. For example, a security interest may be perfected by possession and by a subsequent registration, or by two different registrations.

131. The new section has been reformulated to make it simpler to follow including minor revisions to the note. It aims to make clear that security interests may be continuously perfected in the same way or subsequently by another method.