



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**SECURED TRANSACTIONS
ACT, No. 49 OF 2009**

[Certified on 25th September, 2009]

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Secured Transactions Act, No. 49 of 2009

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L. D.—O. 29/2008.

AN ACT TO PROVIDE FOR THE SECURING OF OBLIGATIONS IN RESPECT OF MOVABLE PROPERTY, MAINTENANCE OF A SECURED TRANSACTIONS REGISTER; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Secured Transactions Act, No. 49 of 2009 and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette* (hereinafter referred to as the “appointed date”).

Short title and date of operation.

PART I

APPLICATION OF THE LAW

2. Notwithstanding anything contained in any other law any person who—

Scope of the Act.

- (a) pledges, enters into a purchase agreement, conditional transfer, finance leasing agreement or mortgage of any movable property, assignment of accounts or other rights of payment of consignment;
- (b) enters into an agreement for sale of accounts and chattel paper;
- (c) enters into a lease agreement in respect of a movable property for a period exceeding one year;
- (d) gives any undertaking in terms of section 2 of the Inland Trust Receipts Act, No. 14 of 1990; or
- (e) gives any undertaking of any consignment of goods imported into Sri Lanka in terms of section 2 of the Trusts Receipts Ordinance (Chapter 86),

may secure such pledge, mortgage or obligation, as is specified in items (a), (b), (c), (d) or (e) with a collateral in accordance with the provisions of this Act:

Provided however the application of the provisions of this Act shall not depend on the ownership of the collateral:

Provided further the period of such obligation shall extend for a period exceeding one year.

Exemption from the application of this Act.

3. The following transactions shall be exempt from the application of the provision of this Act:—

- (a) the transfer of a claim for compensation of an employee;
- (b) the sale of accounts or chattel papers arising out of a part of a sale of a business;
- (c) the assignment of accounts or chattel paper instrumental for the purpose of collection only;
- (d) an obligation under a contract to assign the right of payment to an assignee; and
- (e) the transfer of an interest in goods held by the debtor as equipment or consumer goods, where the goods are registered under the Motor Traffic Act, No. 8 of 2009, Sri Lanka Ports Authority Act, No. 52 of 1979, the Merchant Shipping Act, No. 52 of 1971, the Civil Aviation Authority Act, No. 34 of 2002, respectively.

Objective.

4. The objective of the Act is to promote the interest of the national economy and economic activity in accordance with the provisions of this Act and regulations made thereunder, by securing a pledge, mortgage or obligation specified in section 2 of this Act by utilizing collateral recognized by sections 2 and 3, in the manner specified.

5. Any mortgagor, pledgor, conditional transferor, lessor or assignor may accept a collateral for securing such mortgage, pledge, conditional transfer, financial lease or assignment:

Validity of a secured interest.

Provided however no such person shall accept any secured interest other than a secured interest in the purchase money of consumer goods belonging to the debtor:

Provided further such security interest may not be deemed to be invalid due to the rights enjoyed by the debtor to use, sell, exchange or otherwise dispose of such security.

6. Any interest in a collateral offered by a debtor to secure an obligation, may be utilized to secure more than one obligation.

More than one obligation may be secured by the same collateral.

PART II

SECURED TRANSACTIONS

7. (1) There shall be maintained a Secured Transactions Register (hereinafter referred to as the "Register") which shall for the purposes of this Act be maintained by the Credit Information Bureau of Sri Lanka established under the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990. In addition to the powers specified in the said Credit Information Bureau of Sri Lanka Act, the Bureau shall have the following powers, duties and functions:—

Maintenance of Secured Transaction Register.

- (a) to maintain in the manner as prescribed the Register of Secured Transactions and the process of registration of security interest of movables in such Register;
- (b) to register a notice of a security interest in collateral filed by any person specified in item (a), (b), (c), (d) and (e) of section 2;
- (c) to register a notice of interest of a judgment-creditor; and

(d) to maintain records of all expired notices for a period of ten years from the date of expiry thereof.

(2) The powers, duties and functions in relation to registration of security interest of movables shall be carried out by the officers and servants of the Bureau under the directions of the Board of Directors of the Credit Information Bureau of Sri Lanka appointed under section 5 of the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990 :

Provided that in carrying out the powers, duties and functions in relation to registration of the security interest of movables such officers and servants shall be subject to such regulations and rules as may be made from time to time as provided for under this Act.

Duties of the
Filing Office.

8. (1) Each notice filed of record, shall be entered in the Register maintained in terms of section 7 by the Credit Information Bureau of Sri Lanka, and shall be—

- (i) assigned a unique file number, in all instances where it is an initial notice;
- (ii) assigned a number to every notice (not being the initial notice);
- (iii) used to create a record that bears the number assigned to the filed record and the date and time of filing; and
- (iv) open for inspection by the public.

(2) The Register shall contain an index of every initial notice by the name of the debtor and shall index all filed records relating to an initial notice in a manner that associates the initial notice.

(3) The Register shall be maintained in such a manner so as to be able to retrieve a record by the name of the debtor and by the file number assigned to the initial notice to which the record relates and other related records.

(4) The Register shall contain records of lapsed notices for a period of ten years beyond the date on which it has so lapsed.

(5) The acceptance or refusal to register a notice shall not affect the accuracy, authenticity or validity of any information contained in the notice.

9. (1) The Credit Information Bureau of Sri Lanka may furnish the following information to any person who may apply to the office for the same:—

Information
from Credit
Information
Bureau Office of
Sri Lanka.

- (i) information regarding the availability of a debt secured by a collateral in respect of a secured party and the details of such debtor and the collateral as at a given date and time;
- (ii) information relating to the file number and the date and time of filing of the notice to which the request relates;
- (iii) information contained in each notice, to which the request relates.

(2) When forwarding an application for inspection to the Credit Information Bureau of Sri Lanka, the applicant shall furnish the following information relating to the debtor:—

- (i) the national identity card number of a debtor who is a natural person and a citizen of Sri Lanka and in the case of a body corporate the registered number applicable thereto;
- (ii) the name of the debtor if such debtor is a body corporate and a citizen of Sri Lanka;
- (iii) where available the file number of the notice; and
- (iv) the reasons why such information is required.

(3) The Credit Information Bureau of Sri Lanka may communicate information in any language:

Provided that, if requested, the Credit Information Bureau of Sri Lanka shall issue a Certificate containing details of the information requested in the prescribed form signed by an officer authorized in that behalf and such certificate shall be admissible in evidence and shall be *prima facie* evidence of the facts stated therein.

All documents entered in the Register to be public documents.

10. (1) Every document entered in the Register shall be deemed to be a public document.

(2) Any person who requires information in respect of a collateral relating to a secured transaction shall have the right to inspect and obtain copies of any document filed with the Credit Information Bureau of Sri Lanka upon the payment of a prescribed fee.

Contents of initial notice.

11. (1) Every initial notice shall contain—

- (i) the national identity card number of a debtor and the name of the debtor with a mailing address within Sri Lanka and in the case of a body corporate the registration number applicable thereto;
- (ii) the national identity card number of the secured party or an agent authorized by the secured party in writing and in the case of a body corporate the registration number applicable thereto and the mailing address within Sri Lanka of the secured party or of such agent or of the body corporate;
- (iii) a description of the collateral covered by the notice; and
- (iv) any other prescribed information required to assess the creditworthiness of any person specified in section 2 of this Act:

Provided however, a notice shall, if such collateral covers future expectations of fixtures, contain a description of the relevant movable property.

(2) A person who secures an obligation with a collateral shall be entitled to file an initial notice only where the debtor authorizes the filing of such notice. Such authorization shall however not form part of the notice.

(3) Any debtor specified in section 2 of this Act shall authorize the filing of an initial notice covering the collateral specified in the security agreement and the proceeds, if any, of the collateral, by signing the agreement which he entered into irrespective of the period covered by such agreement.

(4) An initial notice may be filed before entering into a secured transaction.

12. (1) Notwithstanding anything contained in any other law, a notice shall be valid and effective if it clearly provides in the case of—

Name of the debtor and secured party.

- (i) the debtor being a person, the name and the national identity card number of such person;
- (ii) the debtor being natural person and not a citizen of Sri Lanka the name of the person as specified on such person's passport and the place of issue of the passport;
- (iii) the debtor not being a natural person and is registered under the Companies Act or otherwise recognized as a person in terms of any other law of Sri Lanka, the name of the debtor as specified on the Register maintained at the Registrar of Companies or the name recognized under any other law of Sri Lanka;
- (iv) the debtor being a foreigner other than a natural person, qualified to do business under the Companies Act, the name of the debtor as specified

on the Register maintained at the Registrar of Companies; or

- (v) the debtor being a person other than a person specified in paragraph (iv) of this section, the name of the debtor as specified on the appropriate registry in the country where the foreign person is registered.

(2) When a notice provides the name of the debtor accurately, absence of a trade name or other name of the debtor shall not make such notice invalid:

Provided that such notice shall be invalid if the notice fails to specify accurately the name of the debtor.

(3) A person may provide in a notice the names of more than one debtor and the name of more than one secured party.

(4) Failure to specify the status of a person as an agent of a secured party shall not invalidate such notice.

PART III

AMENDMENT, CONTINUATION AND TERMINATION OF THE NOTICE

Effect of changes.

13. (1) Where an obligee waives the requirement of collateral while its security interest or the obligation remains in force, the initial notice filed of record shall continue to be valid and effective, notwithstanding the fact that the knowledge or consent of the secured party may or may not have been obtained for such waiver.

(2) Where a notice filed of record becomes misleading due to change of the name of the debtor, the notice shall be valid and effective in order to perfect a security interest in

collateral acquired by a debtor within four months from the change of name of the debtor:

Provided however such notice shall be valid and effective to perfect a security interest acquired by the debtor after four months from the date of change of the name, if such change is brought to the notice of the Credit Information Bureau of Sri Lanka within four months from the date of such change.

(3) A notice remains valid and effective after the change of the name of the debtor unless due to change of circumstances the notice fails to contain an accurate description of the details of the debtor.

14. (1) Every notice filed under this Act shall be valid for a period of five years from the date of filing unless the period of validity is extended by the filing of a continuation statement.

Validity of a notice.

(2) Upon the expiration of the validity of a notice, the security interest perfected by such notice shall become invalid unless the security interest is perfected without the filing of a notice.

(3) If the security interest becomes invalid upon the expiration of the validity of such notice it shall be deemed never to have been perfected against a prior or subsequent purchaser of a collateral for value.

15. (1) An initial notice may be amended by making one or more amendments. An amendment shall—

Amendment of notice.

- (i) identify the initial notice by the unique file number allocated to such notice;
- (ii) specify the name of the secured party on the notice and the name of the person who authorizes the amendment;

- (iii) indicate that it is an amendment to the notice; and
- (iv) provide all the relevant information required of an initial notice, in a manner that reflects the amended state of the notice.

(2) Where an amendment makes an addition to the collateral covered by a notice, or a debtor to a notice, such amendment shall be effective if the debtor authorizes in writing, the filing of such amendment.

(3) Where there is more than one secured party specified on the notice, the amendment shall be valid if one secured party authorizes in writing, the filing of such amendment.

(4) An amendment made for the addition of a collateral to the notice shall be valid with respect to the collateral so added, only from the date of the filing of such amendment.

(5) An amendment made for the addition of a name of a debtor to the notice shall be valid with respect to the debtor so added, only from the date of the filing of the amendment.

(6) Where a secured party specified on the notice authorizes in writing the filing of an amendment, such an amendment other than an amendment to add a collateral or add a debtor shall be valid.

(7) An amendment shall be invalid where it deletes all names of secured parties without providing a name of a new secured party, or deletes the name of a debtor and fails to provide a name of a debtor not previously specified on the notice.

(8) Where there is more than one secured party on a notice, each secured party may be required to authorized the filing of an amendment.

(9) Subject to the provisions of section 11, the period of validity of a notice, shall not be extended or deemed to be extended due to filing of an amendment.

16. (1) The period of validity of a notice may be extended by filing a continuation statement that— Continuation of notice.

- (i) identifies the initial notice by its unique file number;
- (ii) identifies a secured party on the notice who authorizes the continuation statement; and
- (iii) indicates the extension of the validity of the notice, with respect to the secured party who authorized the filing.

(2) A continuation statement may be filed within six months prior to the expiration of the five year period of the notice, and upon filing of a continuation statement within the period specified herein, the validity of the notice shall continue for a further period of five years commencing from the date on which the notice would have become invalid.

(3) Upon the expiration of the extended period of five years as specified in subsection (2), the validity of such notice shall lapse unless prior to the expiration of the validity another continuation statement authorized by that secured party is filed. The validity of a notice shall thereupon continue only with respect to the secured party who authorized the filing of the continuation statement.

(4) Succeeding continuation statements may be filed in the same manner to continue the validity of the notice.

17. (1) The validity of a notice may be terminated by filing a termination statement in the prescribed form. Termination of notice.

(2) Upon the receipt of a written demand from a debtor, the secured party may file a termination statement if there is—

- (a) no outstanding secured obligation;
- (b) no commitment to make an advance; and
- (c) written authorization for the filing of a notice by debtor.

Effectiveness
of notice.

18. (1) An initial notice, amendment, continuation statement, or termination statement, shall be deemed to be valid from the date of registration and inclusion in the Register.

(2) The Credit Information Bureau of Sri Lanka may refuse to accept any document for registration—

- (i) where such document is an initial notice and such notice fails to provide the name of a debtor;
- (ii) where such document is an amendment and the record fails to provide the name of a debtor;
- (iii) where such document is a continuation statement and the record fails to provide the file number of the initial notice or has failed to deliver the same within a period of six months from the date of expiry of the first initial notice;
- (iv) where such document is a termination statement and the record fails to provide the file number of the initial notice or the notice has lapsed with respect of each secured party who's name is specified in the notice; and
- (v) where the obligor has failed to pay the required fee or no arrangement has been made for the periodic payment of fees.

(3) Where Credit Information Bureau of Sri Lanka refuses to accept a record for reasons other than the ones set out in this Act, such record shall be valid as filed of record except against in the purchase of collateral that gives the value in reasonable reliance upon the absence of the record from the files.

(4) Where the Credit Information Bureau of Sri Lanka refuses to accept a record for filing, it shall promptly communicate such fact with reasons, if any for its refusal, to the person who presented the record.

(5) A notice authorized by one secured party on the notice shall not affect the rights of another secured party on the notice.

19. (1) A person who has reasons to believe that the name of the person is inaccurate or wrongfully specified in the initial notice he shall forthwith take steps to bring such fact to the notice of the Credit Information Bureau of Sri Lanka, and the Bureau shall upon consideration of the matter correct the name accordingly.

Claim concerning inaccurate or wrongfully filed notice.

(2) A correction statement may—

- (a) identify the record to which it relates by the file number assigned to the initial notice;
- (b) indicate that it is a correction statement;
- (c) give reasons for the basis of the belief that such statement is inaccurate and the manner of rectification of such statement; and
- (d) indicate that the notice covers accounts or chattel paper that have been sold but as to which the debtor or other person obligated has discharged its obligation.

(3) A termination statement effectively terminates the interest of a secured party on the notice, only if the termination statement is authorized in writing by that secured party. Upon the filing of an effective termination statement, the notice to which the termination statement relates becomes ineffective with respect to the authorizing of the secured party.

Registration of
notice &c.,

20. (1) The Credit Information Bureau of Sri Lanka shall cause the registration of any notice, an amendment, continuation statement or termination statement.

(2) The registration with the Credit Information Bureau of Sri Lanka shall provide the final and conclusive evidence regarding availability or non-availability of a mortgage in respect of a collateral.

(3) Where the Credit Information Bureau of Sri Lanka refuses to register any notice, amendment, continuation statement or termination statement, it shall communicate the reasons in writing to the person who applies for such registration.

(4) A notice authorized by one secured party on the notice and filed of record shall not affect the rights of another party.

(5) Any person who notifies that the notice filed of record contains erroneous information, he shall file a document rectifying such error forthwith.

Duty to give
information.

21. (1) It shall be the duty of the Credit Information Bureau of Sri Lanka to furnish prescribed information to any person in relation to any notice filed therein.

(2) The Credit Information Bureau of Sri Lanka may issue a Certificate in the prescribed form containing the required information and maintain documents in the manner specified in the rules.

PART IV

MISCELLANEOUS

22. (1) The Credit Information Bureau of Sri Lanka may make rules in respect of the procedure relating to administration, management, maintenance of documents and procedure to be followed in the transaction of business in terms of this Act. Rules.

(2) Every rule made by the Credit Information Bureau of Sri Lanka shall be published in the *Gazette*.

23. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act or in respect of matters for which regulations are required or authorized by this Act to be made including the following:— Regulations.

- (i) the amount of the fees to be charged for services rendered and the manner of collecting such fee including the manner of carrying out the function of maintaining the Register in terms of section 7 and the matters to be included in such Register;
- (ii) the manner to conduct searches including the manner to use electronic records;
- (iii) form for the submission of notices and information required;
- (iv) particulars of the judgment creditor and the details of the movable property, identification details of the person owing payment or performance of the judgment creditor, details and the notice of security.

(2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified, therein.

(3) Every regulation made by the Minister, shall as soon as convenient after the date of its publication in the *Gazette*, be brought before the Parliament for approval. Any regulation which it is not so approved shall be deemed to be rescinded from the date of disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation is deemed to be so rescinded shall be published in the *Gazette*.

Sinhala text
to prevail in
case of
inconsistency.

24. In the event of any inconsistency between the Sinhala and the Tamil texts of this Act, the Sinhala text shall prevail.

Interpretation.

25. For the purposes of this Act, unless the context otherwise requires—

“assignment” means the transfer from one person to another, in whole or in part, of any right in an account, chattel paper, document, instrument, or other right to payment;

“chattel paper” means a record that creates a debt and a security interest in, or a lease of, goods;

“credit Information Bureau of Sri Lanka” means the Credit Information Bureau of Sri Lanka established under section 2 of the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990;

“collateral” means the property subject to a security interest, and may include movable things of any nature, intangible things of any nature, farm products, fixtures, timber to be cut, and minerals to be extracted, and includes collateral that arises in the future, and collateral located in or outside of Sri Lanka, accounts and chattel paper that have been sold, leased goods, and proceeds;

“judgment creditor” means—

- (i) a person who obtains a right in a secured party’s collateral, or a right to seize a secured party’s collateral, by order of a court or by any authority under prevailing law, other than the Inland Revenue Act, No. 10 of 2006;
- (ii) the liquidator under the Companies Act, No. 7 of 2007;
- (iii) the receiver under the Insolvency Ordinance (Chapter 97); and
- (iv) a preferential creditor;

“notice” means a record filed or presented for filing in the Register maintained by the Credit Information Bureau of Sri Lanka and includes an amendment, continuation statement, and termination statement that are filed or presented for filing. An “initial notice” is the notice to which an amendment, continuation statement, termination statement, or correction statement may relate;

“National Identity Card” means the national identity card issued under the provision, of the Registration of Persons Act, No. 32 of 1968;

“proceeds” means—

- (i) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (ii) whatever is collected on, or distributed with respect to, collateral;
- (iii) rights arising out of collateral;

- (iv) to the extent of the value of collateral, claims arising out of the loss or non-conformity of, defects in, or damage to the collateral; and
- (v) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or non-conformity of, defects in, or damage to the collateral;

“secured party” means a lender, seller or other person in whose favour a security interest is created under a security agreement, including a person to whom accounts or chattel paper have been sold, and a lessor of goods;

“secured transaction” means any transaction specified in section 2 of the Act;

“value” means the value that a person gives where the person acquires the rights—

- (i) in return for a binding commitment to give credit, whether or not drawn upon; or
- (ii) as security for, or satisfaction of, a pre-existing claim, in whole or in part;
- (iii) by accepting delivery pursuant to a pre-existing contract for purchase; or
- (iv) in return for anything given in exchange, for promise.

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