

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

Part II of August 16, 2019

SUPPLEMENT

(Issued on 16.08.2019)



SECURED TRANSACTIONS

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BILL

to provide for an institutional framework for the regulation of Secured Transactions in movable property by the establishment of the Secured Transactions Registration Authority; to set out the powers and duties of such Authority; to provide for the determining of priorities amongst creditors having competing security rights in the movable property of their debtors; to set out the rights and duties of parties to security agreements; to provide for the establishment and maintenance of a registry of security rights in movable property and for matters connected therewith or incidental thereto

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Secured Transactions

L.D.—O. 47/2015

AN ACT TO PROVIDE FOR AN INSTITUTIONAL FRAMEWORK FOR THE REGULATION OF SECURED TRANSACTIONS IN MOVABLE PROPERTY BY THE ESTABLISHMENT OF THE SECURED TRANSACTIONS REGISTRATION AUTHORITY; TO SET OUT THE POWERS AND DUTIES OF SUCH AUTHORITY; TO PROVIDE FOR THE DETERMINING OF PRIORITIES AMONGST CREDITORS HAVING COMPETING SECURITY RIGHTS IN THE MOVABLE PROPERTY OF THEIR DEBTORS; TO SET OUT THE RIGHTS AND DUTIES OF PARTIES TO SECURITY AGREEMENTS; TO PROVIDE FOR THE ESTABLISHMENT AND MAINTENANCE OF A REGISTRY OF SECURITY RIGHTS IN MOVABLE PROPERTY 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. of 2019 and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette*.
- Short title and date of operation.

PART I

PRELIMINARY

2. Subject to the provisions of section 3, the provisions of this Act shall apply-
- Application of the Act.
- (a) in respect of every transaction that in substance creates a security right, irrespective of its form and without having regard to the type of asset or the person who has the title to the collateral that is the

subject of such security right, including but without limiting to-

- 5 (i) chattel mortgage, conditional sale, debenture, fixed charge, floating charge, pledge, trust indenture or trust receipt; and
- (ii) an assignment, consignment, lease or transfer of chattel paper, where payment or performance of an obligation is secured;
- 10 (b) to a transfer of an account or chattel paper, even where such transfer may not secure payment or performance of an obligation; and
- (c) to a lease for a term over one year, even where such lease may not secure payment or performance of an obligation.

15 **3.** (1) Unless otherwise provided for in this Act, the provisions of this Act shall not apply to-

Exemption from the application of the Act.

- (a) any lien granted by or under any law unless otherwise provided, and to any non-consensual lien that is recognized by courts;
- 20 (b) the transfer of an interest or claim in or under a contract of annuity or a policy of insurance, other than the transfer of a right to money or other value payable under a policy of insurance as indemnity or compensation, for loss or damage caused to a collateral;
- 25 (c) the assignment or transfer of an interest in the present or future wages, salary, emolument or commission or any other form of payment for any work undertaken or services rendered, the

assignment or transfer of which is prohibited by law;

- 5 (d) the transfer of an unearned right to a payment under a contract, to a transferee who is to perform the transferor's obligations under the contract;
- (e) the creation or the transfer of an interest in any immovable property, including a mortgage, charge or lease of any such property, other than-
 - 10 (i) an interest in a fixture; or
 - (ii) an assignment of a right to payment under a mortgage, charge or a lease, where the assignment does not convey or transfer the assignor's interest in the immovable property;
- 15 (f) the sale of accounts, chattel papers or goods as part of a sale of the business out of which they arose, except where the seller remains in control of the business after the sale;
- 20 (g) the transfer of accounts made solely for the purpose of facilitating the collection of accounts for the transferor;
- (h) intermediated securities;
- (i) a transaction that is subject to the Pawnbrokers Ordinance (Chapter 90);
- 25 (j) the payments arising from or under financial contracts governed by any agreement pertaining to the settlement of such payment, other than any receivables owed on the termination of all outstanding transactions; and

- (k) the transfer of an interest in goods held by a debtor where the goods are registered under the Motor Traffic Act (Chapter 203), the Sri Lanka Ports Authority Act, No. 51 of 1979, the Merchant Shipping Act, No. 52 of 1971 and the Civil Aviation Authority of Sri Lanka Act, No. 34 of 2002.

(2) For the purpose of paragraph (h) of subsection (1), “intermediated securities” means securities credited to a securities account and rights or interests in securities resulting from the credit of securities to a securities account.

4. A security right shall be considered to have been perfected, when- Attaining perfection.

- (a) it has been validly created in terms of Part III of this Act; and
- (b) all measures required to attain perfection as provided for by this Act, have been completed.

5. (1) An unperfected security right in collateral, shall be subordinate to- Subordination of unperfected security rights.

- (a) the interest of a perfected security right;
- (b) the interest of a creditor who has registered a notice of judgment with the Registrar, where such right was unperfected at the time such notice was registered; and
- (c) the right of any person under any law, whether statutory or otherwise, to participate in a distribution of movable property, subject to the interest of a creditor referred to in paragraph (b).

(2) An unperfected security right in-

(a) collateral, shall not be effective against-

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(i) an assignee in any insolvency proceedings, if the security right is unperfected at the time of the bankruptcy; or

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(ii) a liquidator appointed under the Companies Act, No. 7 of 2007, if the security interest is unperfected when the winding up order is made;

(b) chattel paper, documents of title or goods shall not be effective against a transferee thereof, if the transferee-

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(i) acquires the interest in the collateral under a transaction that does not secure payment or performance of an obligation;

(ii) gives value; and

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(iii) receives delivery of the collateral, without knowledge of the security right; and

(c) tangibles other than accounts shall not be effective against a transferee thereof, if the transferee-

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(i) acquires the interest in the collateral under a transaction that does not secure payment or performance of an obligation; and

- (ii) gives value without knowledge of the security right.

PART II

ESTABLISHMENT OF THE SECURED TRANSACTIONS REGISTRATION AUTHORITY

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6. (1) There shall be established an Authority called the Secured Transactions Registration Authority (hereinafter in this Act referred to as the “Authority”).

Establishment of the Secured Transactions Registration Authority.

(2) The Authority shall, by the name assigned to it by subsection (1), be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in its corporate name.

7. The objective of the Authority shall be to promote the interests of the national economy by facilitating and participating in the regulation of secured transactions in movable property, in compliance with the provisions of this Act.

Objective of the Authority.

8. (1) The administration and management of the affairs of the Authority shall be vested in a Board of Directors (hereinafter in this Act referred to as the “Board”), consisting of the following members:-

Board of Directors of the Authority.

(a) the Governor of the Central Bank of Sri Lanka who shall be the Chairman of the Board, or a person nominated by him as his representative;

(b) the Secretary to the Treasury or a person nominated by him as his representative;

(c) the Chairman and a Director of the Bureau or persons nominated by them as their representatives; and

(d) the Registrar of the Authority appointed under section 16 of this Act.

30

(2) The Registrar shall be the Secretary to the Board and shall be responsible for maintaining a record of the minutes of all meetings of the Board.

9. The duties and functions of the Board shall be-

Duties and functions of the Board.

- 5 (a) to register security rights of movable property under Part VI of this Act;
- (b) to register the rights of judgment creditors;
- (c) to determine the policies related to the registration system maintained by the Bureau;
- 10 (d) subject to the provisions of this Act, to determine the fees or any other charges to be levied for services rendered by the Authority; and
- 15 (e) to perform and discharge such duties and functions that are specifically imposed on the Board by or under this Act.

10. The Board shall exercise such powers as may become necessary or appropriate in order to achieve its objective and for the effective performance and discharge of the duties and functions imposed upon it by section 9 of this Act.

Powers of the Board.

11. (1) The Board shall meet not less than once in every quarter and the Chairman shall preside at all meetings of the Board. In the absence of the Chairman from any meeting, the members present shall elect a member from among themselves, to preside at such meeting.

Meetings of the Board.

(2) The quorum for any meeting of the Board shall be three members and the Board shall regulate the procedure for the conduct of its meetings and the transaction of business at such meetings.

(3) All questions for decision at any meeting of the Board shall be decided by the majority vote of the members present at such meeting. In case of an equality of votes, the Chairman or the member presiding at the meeting, shall have a casting
5 vote.

(4) No act, proceeding or decision of the Board shall be invalidated by reason only of the existence of any vacancy among its membership or any defect in the nomination of any person who is nominated to represent a member of the
10 Board.

12. (1) The seal of the Authority shall be as determined by the Board and may be altered in such manner as may be determined by it. Seal of the Authority.

(2) The seal of the Authority shall be in the custody of the
15 Secretary to the Board.

(3) The seal of the Authority shall not be affixed to any instrument or document, except with the sanction of the Board and in the presence of the Chairman and one other member of the Board, who shall sign such instrument or
20 document in token of their presence.

(4) The Secretary to the Board shall maintain a register of all the instruments and documents to which the seal of the Authority has been affixed.

13. (1) The Authority shall have its own Fund. Fund of the Authority.

25 (2) There shall be credited to the Fund of the Authority-

(a) all such sums of money as may be voted upon from time to time by Parliament for the use of the Authority;

30 (b) all such sums of money received as fees or charges imposed in respect of services rendered by the Authority; and

(c) all such sums of money as may be received by the Authority by way of loans, donations, gifts and grants from any source whatsoever.

5 (3) There shall be paid out of the Fund of the Authority all such sums of money required to defray expenditure incurred by the Authority in the exercise, performance and discharge of its powers, duties and functions by or under this Act.

10 **14.** (1) The financial year of the Authority shall be the calendar year. Financial year and the audit of accounts.

(2) The Board shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other financial transactions of the Authority.

15 (3) The provisions of Article 154 of the Constitution relating to the audit of accounts of public corporations, shall apply to and in respect of the audit of accounts of the Authority.

20 **15.** The provisions of Part II of the Finance Act, No. 38 of 1971 shall *mutatis mutandis* apply to and in respect of financial control and the maintenance of accounts of the Authority. Application of Part II of the Finance Act, No. 38 of 1971.

25 **16.** (1) The Board shall, with the approval of the Minister, appoint a person having such qualifications as may be prescribed, to be the Registrar for the purposes of this Act (in this Act referred to as the "Registrar"), who shall be the Chief Executive Officer of the Authority. The Registrar.

30 (2) The Registrar shall be responsible for the general supervision of all matters connected with the registrations required to be carried out under this Act and for the performance and discharge of all duties and functions assigned to him by and under this Act. He shall also be responsible for the administrative control of the officers and employees of the Authority.

(3) The Registrar shall not be liable for anything done by him in good faith, in the performance and discharge of any duty or function imposed upon him by or under this Act.

5 (4) The Board may, with the concurrence of the Minister and for reason assigned therefor, remove from office the Registrar appointed under subsection (1).

10 (5) The Registrar may, with the approval of the Board and whenever he considers it necessary to do so, delegate to any officer of the Authority, any duty or function imposed upon him by or under this Act and such officer shall perform or discharge such duty or function, subject to the direction and control of the Registrar.

15 **17.** (1) The Authority may appoint such officers and employees as it considers necessary for the efficient exercise, performance and discharge of its powers, duties and functions as may be assigned by or under this Act. Staff of the Authority.

20 (2) At the request of the Authority, any officer in the public service may, with the consent of that officer and the Secretary to the Ministry under which that officer is employed, and the Secretary to the Ministry of the Minister assigned the subject of Public Administration, be temporarily appointed to the staff of the Authority for such period as may be determined by the Authority or with like consent, be permanently appointed to such staff.

25 (3) Where any officer in the public service is temporarily appointed to the staff of the Authority, the provisions of section 14(2) of the National Transport Commission Act, No. 37 of 1991 shall, *mutatis mutandis*, apply to and in relation to such officer.

30 (4) Where any officer in the public service is permanently appointed to the staff of the Authority, the provisions of section 14(3) of the National Transport Commission Act, No. 37 of 1991 shall, *mutatis mutandis*, apply to and in relation to such officer.

(5) Where the Authority employs any person who has entered into a contract with the Government by which he has agreed to serve the Government for a specified period, any period of service with the Authority by that person shall
5 be regarded as service to the Government for the purpose of discharging the obligations of such contract.

(6) At the request of the Authority, any officer of a Provincial Public Service may, with the consent of that officer and the relevant Provincial Public Service Commission, be
10 temporarily appointed to the staff of the Authority for such period as may be determined by the Authority or, with like consent, be permanently appointed to such staff.

18. The Registrar and all other officers and employees of the Authority shall be paid such remuneration and other
15 allowances, in such manner and at such rates as may be determined by the Minister with the concurrence of the Minister assigned the subject of Finance and shall be subject to such terms and conditions of service, as may be determined by the Board, by rules made in that behalf.

Remunerations to be paid to the Registrar and officers and employees of the Authority.

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PART III

CREATION OF SECURITY RIGHTS AND RIGHTS OF PARTIES

19. (1) Except as otherwise provided for in this Act or
in any other law, a security agreement shall be effective
25 according to its terms between the parties to the agreement and against a third party.

Freedom of contract.

(2) A perfected security right in proceeds shall be enforceable against a third party, irrespective of whether or not the security agreement contains a description of the proceeds.

30 (3) Where a security agreement is in writing, the secured party shall deliver a copy of the written agreement to the debtor within ten days of its execution and if the secured

party fails to deliver a copy after a request is made by the debtor, a Magistrate Court shall have the power, upon an application made in that behalf by the debtor, to make an order for the delivery of such copy to the debtor.

5 **20.** (1) A security right including a security right in the nature of a floating charge, attaches when- Creation of a security right.

(a) value is given;

10 (b) the debtor has rights in the collateral or the power to transfer rights in the collateral to a third party; and

(c) (i) the debtor has signed an agreement that contains a description of the collateral sufficient to enable it to be identified; or

15 (ii) the collateral is in the possession of the secured party or any other person on behalf of the secured party.

20 (2) Notwithstanding the provisions of subsection (1), where the parties to the security agreement have specifically agreed to postpone the time of creation, the security right shall attach at the agreed time.

(3) A security right shall not be enforceable against a third party, unless it has attached in the manner provided for in subsection (1).

25 **21.** (1) Subject to the provisions of subsection (2), a security agreement may cover any property acquired after entering into such agreement: Security in movable property acquired after the agreement.

30 Provided that a security right in property acquired after entering into an agreement shall not become an enforceable security right, until the debtor acquires a right to such property.

(2) A security right shall not be created under a clause in a security agreement covering any property acquired after entering into such agreement-

5 (a) in respect of crops that become such crops more than one year after the security agreement has been entered into, except that a security right in crops that is given in conjunction with a lease, purchase or mortgage of immovable property may be created, if so agreed, in crops grown in the property concerned during the term of such lease, purchase or mortgage, as the case may be; or

(b) in respect of consumer goods other than accessions, unless-

15 (i) the debtor acquires rights in them within ten days of the secured party giving value; or

(ii) the debtor grants a security right in his personal assets to secure a personal guarantee, for a non-consumer transaction.

20 **22.** A security agreement may contain a provision to secure future advances, provided that a maximum amount of money that may be so advanced is specified in the security agreement. Future advances.

25 **23.** An agreement by a debtor not to assert against an assignee any claim or a defence that such debtor has against the debtor's seller or lessor, shall be enforceable by the assignee who takes such assignment for value in good faith and without notice, except as to any defences that may be asserted against the holder in due course of a negotiable instrument under the Bills of Exchange Ordinance Agreement not to assert defence against an assignee.
30 (Chapter 82).

24. Where a seller retains an acquisition security right in any goods sold- Application of the Sale of Goods Ordinance.

5 (a) the law relating to contracts of sale including the Sale of Goods Ordinance (Chapter 84) shall govern the sale and any disclaimer, limitation or modification of the seller's conditions and warranties; and

10 (b) except as provided for in section 23, the conditions and warranties in a sale agreement shall not be affected by any security agreement.

25. Where a security agreement provides for a secured party to accelerate payment or performance in the event that the secured party considers that the collateral is in jeopardy or that the secured party is insecure, the security agreement Acceleration clauses.

15 shall be construed to mean that the secured party has the right to do so, only in the event that the secured party in good faith believes and has reasonable grounds to believe, that the prospect of payment or performance is or is about to be impaired or that the collateral is or is about to be placed

20 in jeopardy.

26. (1) A secured party shall exercise reasonable care in the custody and preservation of any collateral in the secured party's possession and unless otherwise agreed upon, in the case of a chattel paper or an instrument, reasonable care Custody and preservation of collateral by a secured party.

25 shall include taking necessary steps to preserve the rights against prior parties.

(2) Unless otherwise agreed upon, if a collateral is in the possession of a secured party-

30 (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in

obtaining and maintaining possession of the collateral and its preservation, shall be chargeable to the debtor and shall be secured by the collateral;

5 (b) any risk, loss or damage, except if caused due to the negligence of the secured party, shall be on the debtor, to the extent of any deficiency in any insurance coverage;

10 (c) the secured party may hold as additional security any increase or profits, except money received from the collateral, and any money so received unless remitted to the debtor, shall be applied forthwith in the reduction of the obligation secured; and

15 (d) the secured party shall keep the collateral in a manner that it can be identifiable, however fungible collateral may be co-mingled.

(3) A secured party shall be liable for any loss or damage caused by such party's—

20 (a) failure to meet any obligation imposed by subsection (1) or subsection (2), but shall not lose the security right in the collateral; and

(b) use of the collateral otherwise than as authorized by subsection (4).

(4) A secured party may use the collateral—

25 (a) in the manner and to the extent provided for in the security agreement;

(b) for the purpose of preserving the collateral or its value; or

(c) in accordance with any order made by a court.

27. (1) The debtor or an authorized representative of the debtor may, by notice in writing given to the secured party, require such secured party to furnish to such person-

Obtaining information about the security agreement.

5 (a) a statement in writing of the amount of the indebtedness and the terms of payment thereof, as of the date specified in the notice;

10 (b) a statement in writing approving or correcting as of the date specified in the notice, a statement of the collateral or part thereof as specified in a list attached to such notice;

(c) a statement in writing approving or correcting as of the date specified in the notice, a statement of the amount of indebtedness and of the terms of payment thereof; or

15 (d) a true copy of the security agreement.

(2) The provisions of subsection (1) shall not apply where the secured party is the trustee under a trust indenture.

20 (3) If the secured party claims a security right in all of the collateral or in all of a particular type of collateral owned by the debtor, the secured party may indicate such fact, in lieu of approving or correcting the list of such collateral required to be attached to the notice under paragraph (b) of subsection (1).

25 (4) Subject to the payment of any charge required under subsection (6), the secured party shall respond to a notice issued under subsection (1) within fifteen days of receiving the same, and if the secured party without a reasonable excuse-

30 (a) fails to respond within the fifteen days period, the secured party shall be liable for any loss or damage

caused thereby to any person who is entitled to receive information under that subsection; or

5 (b) gives any response which is incomplete or incorrect, the secured party shall be liable for any loss or damage caused thereby to any person who may reasonably be expected to rely on such response.

(5) Where a person who receives a notice under subsection (1) no longer has an interest in the obligation or property of the debtor that is the subject matter of the notice, such person
10 shall, within fifteen days of the receipt of such notice, disclose the name and address of the immediate successor in such interest, and if known, the latest successor to such interest. If such person fails to make such disclosure without a reasonable excuse, the person making the request shall, in
15 addition to any other remedy that may be provided for by this Act, be entitled to apply to court under section 28, for an order to comply with the request.

(6) A person to whom a request is made under this section, may require the payment of a prescribed fee in advance, for
20 each request made, however a debtor shall be entitled to a reply free of charge, once in every six months.

28. (1) On an application made in that behalf, a Magistrate Court having jurisdiction shall have the power to make an order- Power of court to issue an order of compliance.

25 (a) requiring the secured party or the person receiving a notice under subsection (1) of section 27, to comply with the request made by such notice;

(b) exempting the secured party either wholly or partly
30 from complying with the notice given under subsection (1) of section 27;

(c) extending the time granted for complying with the notice issued under paragraph (a) of subsection (1) of section 27; or

(d) as it considers just in the circumstances.

5 (2) Any person who fails to comply with an order made by a Magistrate under subsection (1) shall commit an offence under this Act and shall on conviction be liable to a fine not exceeding rupees five hundred thousand or to imprisonment for a period not exceeding one year or to both such fine and
10 imprisonment.

PART IV

PERFECTION

29. (1) Subject to the provisions of section 4 of this Act, possession of the collateral by the secured party or by
15 any other person on behalf of the secured party, shall perfect a security right in- Perfection of a security right.

(a) a chattel paper;

(b) goods;

(c) an instrument;

20 (d) a certified security; and

(e) money.

(2) Registration of a security right under Part VI of this Act, shall perfect any type of collateral.

25 (3) For the purposes of subsection (1), the collateral shall be actually delivered into the possession and custody of the secured party or his authorized representative, and continue to remain actually, ostensibly and *bona fide* in such

possession, until such time as the secured party seeks to enforce its rights in respect of such collateral.

30. (1) A security right which is perfected by possession in- Temporary perfection.

5 (a) an instrument or a certificate that a secured party delivers to the debtor, for the purpose of-

- (i) a sale or an exchange;
- (ii) presentation, collection or renewal; or
- (iii) registration of a transfer; or

10 (b) a negotiable document of title or goods held by a bailee that is not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor, for the purpose of-

- 15 (i) a sale or an exchange;
- (ii) loading, unloading, storing, shipping or trans-shipping; or
- (iii) manufacturing, processing, packaging or dealing with goods in any other
- 20 manner, prior to their sale or exchange,

shall remain perfected, during the first ten days after the collateral comes under the control of the debtor.

(2) On the expiry of the period of ten days referred to in subsection (1), the security right concerned shall become subject to the provisions of this Act that provide for the perfecting of a security right.

31. (1) Where dealing with a collateral gives rise to proceeds, the security right in such collateral- Perfection as to proceeds.

- 5 (a) continues, unless the secured party expressly or impliedly authorizes the dealing with the collateral free of the security right; and
- (b) extends automatically to the proceeds, even though it may not be covered by the security agreement.

10 (2) If a secured party enforces a security right against both the collateral and the proceeds, the amount secured by the security right in the collateral and the proceeds shall be limited to the market value of the collateral at the date of the dealing.

15 (3) A security right in proceeds shall be a continuously perfected security right, if the interest in the collateral was perfected when the proceeds arose.

20 (4) Where a security right in the original collateral is perfected otherwise than by registration, the security right in the proceeds becomes unperfected ten days after the debtor acquires an interest in the proceeds, unless the security right in the proceeds is perfected under this Act.

25 **32.** (1) Subject to the provisions of section 4 of this Act, a security right in the possession of a bailee who has issued a negotiable document of title covering it, is perfected by perfecting a security right in the document, and any security right in such goods otherwise perfected while they are so covered, shall become subject to the perfected security right in such negotiable document of title. Perfection where the goods are held by a bailee.

30 (2) A security right in collateral in the possession of a person other than the debtor, the debtor's agent or a bailee referred to in subsection (1), may be perfected by-

- (a) the issuance of a document of title in the name of the secured party;

- (b) the possession on behalf of the secured party; or
- (c) registration.

5 **33.** (1) Where a debtor sells or leases goods that are subject to a security right, the security right reattaches to the goods, if-

Perfection and priority of returned, seized or repossessed goods.

- (a) the buyer or lessee has taken the goods free of the security right, under paragraph (a) of subsection (1) of section 31 or subsection (1) or (2) of section 34; and

10 (b) the obligation secured remains unpaid or unperformed.

(2) Where a security right in goods reattaches in the circumstances referred to in subsection (1), any question as to-

15 (a) whether or not the security right in the goods is perfected; and

(b) the time of its perfection or registration,

shall be determined as if the goods had not been sold or leased.

20 (3) Where a sale or lease of goods creates an account or chattel paper and the account or chattel paper is transferred to a secured party and the goods are returned or repossessed by the seller or the lessor, the transferee of the account or the chattel paper shall have a security right in such goods.

25 (4) A security right in goods arising under subsection (3) is perfected if the security right in the account or the chattel paper was also perfected, but becomes unperfected on the expiry of ten days after the return or repossession of the

goods, unless the transferee registers a financing statement in respect of the security right or takes possession of the goods, before the expiry of that period.

5 (5) If a transferee of an account obtains a perfected security right in goods under subsection (3) and (4), for the purpose of determining the transferee's priority as to the goods, the transferee shall be deemed to have perfected a security right in the goods at the time the transferee's security right in the account was perfected.

10 (6) Where a transferee of chattel paper obtains a perfected security right in goods under subsections (3) and (4), then as between-

15 (a) the transferee and the holder of a perfected security right that attached under subsection (1), the person who had priority to the chattel paper shall also have priority to the goods; and

20 (b) the transferee and a person other than the holder of a perfected security right that attached under subsection (1), for the purpose of determining the transferee's priority as to the goods, the transferee shall be deemed to have perfected a security right in the goods at the time the transferee's security right in the chattel paper was perfected.

25 **34.** (1) A buyer of goods from a seller who sells the goods in the ordinary course of business, takes them free of any security right therein given by the seller, even though it is perfected and the buyer knows of it, unless the buyer was also aware that the sale constituted a breach of the security agreement. Transactions in the ordinary course of business.

30 (2) The provisions of subsection (1) shall become applicable, whether or not-

(a) the buyer took possession of the goods;

- (b) the seller was in possession of the goods at any time;
- (c) the title to the goods passed to the buyer; or
- (d) the seller took a security right in the goods.

5 (3) In a lease of goods by a lessor who leases goods in the ordinary course of business, the lessee holds the goods to the extent of the lessee's rights under the lease free from any security right therein given by the lessor, unless the lessee was also aware that the lease constituted a breach of the
10 security agreement.

(4) The provisions of subsection (3) applies, whether or not-

- (a) the lessee took possession of the goods; or
- (b) the lessor was in possession of the goods at any
15 time.

(5) A purchaser of chattel paper who takes possession of it in the ordinary course of business and gives new value, has priority over any security right in it that-

- (a) was perfected by registration, if the purchaser was
20 not aware at the time of taking possession that the chattel paper was subject to a security right; or
- (b) has attached to proceeds of an inventory under section 31, whatever the extent of the purchaser's awareness.

25 (6) A purchaser of collateral that is an instrument or negotiable document of title, has priority over any security right therein perfected by registration or temporarily perfected under section 31 or 32, if the purchaser-

- (a) gave value for the collateral purchased;

- (b) purchased the collateral without knowledge that it was subject to a security right; and
- (c) has taken possession of the collateral.

35. The rights of a person who is –

Negotiable instruments etc.,

- 5 (a) a holder in due course of a bill, note or cheque within the meaning of the Bills of Exchange Ordinance (Chapter 82); or
- (b) a transferee from the debtor of money,

shall not be affected by any provisions of this Act.

10

PART V

PRIORITIES

36. (1) The following general rules of priority shall apply to security rights in the same collateral:-

General rules governing priority.

- 15 (a) priority between security rights perfected by registration shall be determined by the date of registration, regardless of the date of perfection;
- 20 (b) priority between a security right perfected by registration and a security right perfected by possession shall be determined by whether the financing statement was registered before possession; and
- (c) priority between unperfected security rights shall be determined by the date of the creation of such security rights.
- 25 (2) For the purpose of subsection (1)-
 - (a) a continuously perfected security right shall

be treated at all times as if perfected, by the method by which it was originally perfected; and

5 (b) the time of registration, possession or perfection of a security right in the original collateral, shall be the time of such registration, possession or perfection of the security right in its proceeds.

10 (3) The transferee of a security right shall acquire the same priority with respect to the security right as the transferor had, at the time of the transfer.

(4) Subject to the provisions of subsection (5), the priority which a security right has under subsection (1) shall also apply to all future advances.

15 (5) A perfected security right has priority over the interest of a judgment creditor referred to in paragraph (b) of subsection (1) of section 5, only to the extent of-

20 (a) advances made before the judgment creditor registers the notice of judgment referred to in that paragraph;

(b) advances made before the secured party has knowledge of the registration of the notice of judgment referred to in that paragraph;

25 (c) advances made in accordance with a statutory requirement or a legally binding obligation owing to a person other than the debtor, entered into by the secured party before acquiring the knowledge referred to in paragraph (b); and

30 (d) reasonable costs and expenses incurred by the secured party for the protection, preservation, maintenance or repair of the collateral.

37. (1) An acquisition security right in inventory or its proceeds shall have priority over any other security right in the same collateral given by the same debtor, if - Priority of acquisition security rights.

5 (a) the acquisition security right was perfected at the time the debtor obtained possession of the inventory or a third party at the request of the debtor obtained or held possession of the inventory;

10 (b) before the debtor receives the possession of the inventory, the secured party of the acquisition security right gives notice in writing to every other secured party who has before the date of registration by the secured party of the acquisition security right, registered a financing statement that describes the collateral as or as including-

15 (i) items or types of inventory, all or some of which are the same as the items or types of inventory that will be subject to the acquisition security right;

 (ii) inventory; or

20 (iii) accounts; and

 (c) the notice referred to in paragraph (b) states that the person giving it has or expects to acquire an acquisition security right in inventory of the debtor, describing such inventory by item or type.

25 (2) Except where the collateral or its proceeds is either inventory or its proceeds, an acquisition security right in collateral or its proceeds shall have priority over any other security right in the same collateral given by the same debtor, if the acquisition security right-

30 (a) in the case of a collateral other than an intangible collateral, was perfected before or within ten days

after the debtor obtained possession of the collateral as the debtor, or a third party at the request of the debtor obtained or held possession of the collateral, whichever occurs earlier; or

- 5 **(b)** in the case of an intangible collateral, was perfected before or within ten days after the creation of the acquisition security right in the intangible collateral.

10 **(3)** If more than one acquisition security right is given priority due to the application of the provisions of subsections (1) and (2), the acquisition security right if any, of the seller, shall have priority over any other acquisition security right given by the same debtor.

15 **38.** A lien on goods that arises as a result of providing in the ordinary course of business, of materials or of services in respect of the goods, shall have priority over a perfected or unperfected security right in such goods, unless the lien arises under any law which provides that it shall not have such priority. Priority of items for materials and services.

20 **39.** **(1)** A perfected security right in crops or their proceeds given not more than six months prior to such crops becoming growing crops by planting or otherwise in order to enable the debtor to produce the crops during the production season, shall have priority over an earlier Security right in crops.
25 perfected security right in the same collateral, to the extent that the earlier interest secures obligations that were due more than six months prior to the crops becoming growing crops by planting or otherwise, even though the person giving value had notice of the earlier security right.

30 **(2)** Where more than one perfected security right is given priority due to the application of subsection (1), each shall rank equally according to the ratio that the amount advanced with respect to each bears to the total amount advanced.

40. (1) A security right in goods that attached- Security right
in fixtures.
- (a) before the goods became a fixture, shall have
priority as to such fixture, over the claim of
any person who has an interest in the
5 immovable property; or
- (b) after the goods became a fixture, has priority
as to the fixture over the claim of any person
who subsequently acquired an interest in the
10 immovable property, but not over any person
who had a registered interest in the
immovable property at the time the security
right in the goods attached and who has not
consented in writing to the security right or
disclaimed an interest in the fixture.
- 15 (2) A security right referred to in subsection (1), shall be
subordinate to the interest of-
- (a) a subsequent purchaser for value of an interest in
the immovable property; or
- 20 (b) a creditor with a prior encumbrance of record on
the immovable property, to the extent that the
creditor makes subsequent advances,
- 25 if the subsequent purchase or the subsequent advance
under a prior encumbrance of record is made or contracted
without the knowledge of the security right and prior
notice of it being registered in accordance with
Chapter III of the Registration of Documents Ordinance
(Chapter 117).
- 30 (3) Where a secured party has an interest in a fixture that
has priority over the claim of a person having an interest in
the immovable property, the secured party may, on default
and subject to the provisions of this Act relating to default,

remove the fixture from the immovable property if, unless otherwise agreed, the secured party reimburses any person having an encumbrance or owner of the immovable property who is not the debtor, for the cost of repairing any physical injury, excluding diminution in value of the immovable property, caused by the absence of the fixture or by the necessity for replacement.

(4) A person who is entitled to any reimbursement under subsection (3) may refuse permission for the removal of the fixture, until the secured party has given adequate security for the reimbursement.

(5) A secured party who has the right to remove a fixture from an immovable property shall serve on each person whose name appears in the records maintained by the relevant Land Registry Office as having an interest in such immovable property, a notice in writing of the secured party's intention to remove the fixture. Such notice shall contain the following information:-

- (a) the name and address of the secured party;
- (b) a description of the fixture to be removed, which is sufficient to enable it to be identified;
- (c) the amount required to satisfy the obligation secured by the security right of the secured party;
- (d) a description of the immovable property to which the fixture is affixed, which is sufficient to enable the immovable property to be identified; and
- (e) a statement of the intention to remove the fixture unless the amount secured is paid on or before a date specified in the notice, which date shall be not less than ten days after the service of the notice.

(6) The notice referred to in subsection (5) shall be served, by sending the same by registered post, to the address of the person to be notified as it appears in the records of the appropriate registry, or in the case of a company, at its registered office or to the address of an attorney authorized to accept any notice on its behalf.

(7) A person having an interest in any immovable property that is subject to a security right in a fixture may, before such fixture has been removed from such property by the secured party in accordance with the provisions of subsection (3), retain the fixture, upon the payment to the secured party of the amount owing in respect of the security right having priority over such person's interest.

41. (1) Subject to the provisions of subsections (2) and (3) and of section 42, a security right in goods that attached-

Security right
in accession.

(a) before such goods became an accession, shall have priority as to the accession, over the claim of any person in respect of the whole; and

(b) after the goods became an accession, shall have priority as to the accession over the claim of any person who subsequently acquired an interest in the whole, but not over the claim of any person who had an interest in the whole of the goods on the date the security right attached to the accession, and who has not consented in writing to the security right in the accession or disclaimed an interest in the accession, as part of the whole.

(2) A security right referred to in subsection (1) shall be-

(a) subordinate to the interest of-

(i) a subsequent buyer of an interest in the whole of the goods; and

5 (ii) a creditor with a prior perfected security right in the whole of the goods, to the extent that the creditor makes subsequent advances,

10 if the subsequent sale or the subsequent advance under the prior perfected security right, is made or contracted for before the security right is perfected; and

(b) subordinate to the interest of a creditor who registers a notice of judgment or notice of claim, before the security right is perfected.

15 (3) Notwithstanding the provisions of paragraph (b) of subsection (2), an acquisition security right in an accession that is perfected before or within ten days after the debtor obtains possession of the accession, shall have priority over the interest of a creditor referred to in that paragraph.

20 (4) If a secured party has an interest in an accession that has priority over the claim of any person having an interest in the whole, the secured party may, on default and subject to the provisions of this Act relating to default, remove the accession from the whole, if, unless otherwise agreed, the secured party reimburses any person having an encumbrance
25 or the owner of the whole of the goods who is not the debtor, for the cost of repairing any physical injury, excluding diminution in value of the whole caused by the absence of the accession or by the necessity of replacement.

30 (5) A person entitled to any reimbursement under subsection (4) may refuse permission to remove the accession, until the secured party has given adequate security for the reimbursement.

(6) A secured party who has the right to remove an accession from the whole, shall serve on each person known to the secured party as having an interest in the balance of the goods and on any person with a security right in such
5 balance, perfected by registration against the name of the debtor through the serial identification number of such balance of the goods, if such number is required for registration, a notice in writing of the secured party's intention to remove the accession, containing-

- 10 (a) the name and address of the secured party;
- (b) a description of the accession to be removed, sufficient to enable it to be identified;
- (c) the amount required to satisfy the obligation secured by the security right of the secured party;
- 15 (d) a description of the other goods sufficient to enable them to be identified; and
- (e) a statement of the intention to remove the accession from the whole, unless the amount secured is paid on or before a date specified in the notice, which
20 date shall not be less than ten days after the service of the notice.

(7) The notice referred to in subsection (6) shall be served by registered post, at least ten days before the accession is removed.

- 25 (8) A person having an interest in the whole that is subject to a security right in the accession may, before the accession has been removed by the secured party in accordance with the provisions of subsection (4), retain the accession upon payment to the secured party of the amount owing in respect
30 of the security right having priority over the person's interest.

42. (1) A perfected security right in goods that subsequently become part of a product or mass of a product, continues in such product or mass, if-

Security right in processed or co-mingled assets.

- 5 (a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or in the mass of the product; and
- (b) more than one security right attaches to the product or the mass of the product,

and the secured parties shall rank equally according to the ratio that the cost of the goods to which each interest originally attached, bears to the cost of the total product or the mass.

(2) Proceeds in the form of funds that become commingled with other funds, so that they are no longer identifiable-

- 15 (a) shall nevertheless be treated as identifiable proceeds; and
- 20 (b) if at any time after the co-mingling takes place the total amount of the funds are found to be less than the amount of the proceeds prior to co-mingling, then the competing claimants shall share the co-mingled funds on a *prorata* basis.

43. A security right in a right to payment under a lease of immovable property to which this Act applies, shall be subordinate to the interest of a person who acquires for value the lessor's interest in the lease or in the immovable property which is the subject matter of the lease, if the interest or the notice thereof of the person is registered in the relevant land registry office before the interest or notice thereof of the secured party is registered in such relevant land registry office.

Right to payment under a lease of immovable property.

5 **44.** A security right in a payment under a mortgage or charge of immovable property to which this Act applies, shall be subordinate to the interest of a person who acquires for value the mortgagee's or chargee's interest in the mortgage or the charge, if the interest of the person is registered in the relevant land registry office before a notice of the security right is registered in such relevant land registry office.

Right to payment under a mortgage of immovable property.

10 **45.** (1) A secured party may subordinate by a security agreement or by a separate agreement entered into between the competing claimants, the secured party's security right to any other interest and such subordination shall be effective according to its terms.

Voluntary subordination.

15 (2) A subordination shall be effective according to its terms between the parties and may be enforced by a third party, if the third party is the person or one of the class of persons for whose benefit the subordination was intended.

20 **46.** The rights of a debtor in collateral may be transferred voluntarily or otherwise, notwithstanding any provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no such transfer shall prejudice the rights of the secured party under the security agreement or otherwise.

Alienation of a debtor's rights in collateral.

25 **47.** (1) Unless an account debtor has made an enforceable agreement not to assert defences or any claims arising out of a contract between such account debtor and the assignor, an account debtor may set up by way of a defence against the assignee-

Assignment of intangibles etc, and rights of third party account debtors.

30 (a) all defences available to the account debtor against the assignor arising out of the terms of the contract or a related contract, including equitable set-off and misrepresentation; and

35 (b) the right to set-off any debt owing to the account debtor by the assignor, that was payable to the account debtor before the debtor received notice of the assignment.

(2) A person obligated on an account or chattel paper may pay the assignor until the person receives notice reasonably identifying the relevant rights that the account or chattel paper has been assigned and, if requested by the account debtor, the assignee shall furnish proof within a reasonable time that the assignment has been made and if the assignee does not do so, the person may pay the assignor.

(3) To the extent that the right to payment or part payment under a contract which has been assigned has not been earned by performance and despite notice of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards and without material adverse effect upon the assignee's rights under the contract or the assignor's ability to perform the contract, shall be effective against the assignee, unless the person obligated on the account or chattel paper has otherwise agreed. However, the assignee shall acquire corresponding rights under the modified or substituted contract.

(4) A term in the contract between the account debtor and assignor that prohibits or restricts the assignment of or the giving of a security right in the whole of the account or chattel paper for money due or to become due, or that requires the account debtor's consent to such assignment or such giving of a security right, shall be-

(a) binding on the assignor, only to the extent of making the assignor liable to the account debtor for breach of their contract; and

(b) unenforceable against third parties.

(5) For the purpose of this section, "account debtor" means a person who is obligated on an account or on chattel paper.

PART VI

REGISTRATION

5 **48.** (1) The powers, duties and functions pertaining to the registration of security rights of movable property shall be exercised, performed and discharged by the Board.

Registration of security rights and the establishment of the Register.

(2) The Bureau shall, for the purpose of this Act, establish, maintain and operate a register to be called and known as the Register of Security Rights in Movable Property (hereinafter referred to as the "Register").

10 (3) The Register shall be maintained in such a manner as to facilitate a search easily and promptly, using any one or more of the criteria specified below:-

(a) by the unique identification number of the debtor;

15 (b) by the financing statement number; or

(c) by any other additional criteria as may be prescribed.

20 **49.** (1) In order to perfect a security right by registration under this Act, a financing statement prepared in the prescribed form shall be required to be registered with the Registrar.

Application for registration of security rights.

25 (2) A person filing a financing statement is required to confirm that the security agreement, to which it relates, has been made or that the debtor consents to the filing of such statement.

(3) A financing statement-

30 (a) that is not in accordance with the form prescribed for the same and does not comply with the requirements imposed by the provisions of this Act or any relevant regulations made in that behalf;

(b) in respect of which the prescribed fee has not been paid or an arrangement for paying the filing fee is not in place; or

5 (c) in which any mandatory fields required to be filled when registering electronically, have not been duly completed,

may be rejected by the Registrar.

50. (1) A financing statement-

Financing statement.

10 (a) may be filed before or after the security agreement to which it relates is made, except where the collateral consists of consumer goods;

15 (b) may relate to more than one security right created or provided for in more than one security agreement between the parties, except where the collateral consists of consumer goods; and

(c) shall include the following information:-

(i) the name of the debtor;

20 (ii) the debtor's unique identification number;

(iii) the name and address of the secured party or its agent;

25 (iv) a description of the collateral in the prescribed manner;

(v) the duration of the filing;

(vi) the maximum amount of obligation secured; and

30 (vii) such other information as may be prescribed.

(2) A financing statement shall also disclose whether the secured party is a trustee.

5 **51.** (1) A financing statement that is filed shall become a registered financing statement, when a date, time, and a number (to be known as the “financing statement number”) are assigned to it by the Registrar. When a registration becomes effective.

(2) A financing statement once registered shall continue to be effective-

(a) until it is discharged; or

10 (b) if the financing statement concerned specifies a date on which its registration ceases to be effective and the registration has not, by then, been discharged, until the date so specified.

15 **52.** (1) Upon the registration of a financing statement, the Registrar shall deliver to the secured party named in the financing statement or its authorized agent, a verification statement in the prescribed form, using a prescribed method of communication. Verification statement.

20 (2) A verification statement referred to in subsection (1) shall include the following:-

(a) the information contained in the financing statement;

(b) the financing statement number; and

(c) the date and time of its registration.

25 **53.** (1) The registration of a financing statement shall become invalid if such statement contains an erroneous unique identification number which prevents the statement from being discovered. However, the validity of a financing statement will not otherwise be affected due to any defect found therein, unless a reasonable person is likely to be misled materially by such defect. Errors in the financing statement.

30

(2) A failure to provide a description of any collateral in a financing statement shall not make the registration ineffective in relation to any other collateral described in such financing statement.

5 (3) For the purpose of this section a “defect” includes any irregularity, omission or error, other than an erroneous unique identification number.

10 **54.** (1) A registered financing statement may at any time before it expires be amended by the filing of an amendment statement. Amendment of a registered financing statement.

(2) An amendment statement is registered when a date, time and a number are assigned to it by the Registrar.

15 **55.** (1) The registration of a financing statement may at any time before it expires be extended or discharged by the filing of an amendment statement. Extension or discharge of registration.

(2) A registration which is extended shall continue to have effect until-

(a) the date specified in the amendment statement; or

(b) the date on which the registration is discharged.

20 (3) For the purpose of determining priority, the effective time and date for a registration that is extended, shall be the time and date of its initial registration.

25 **56.** (1) An amendment statement that does not meet the requirements imposed by this Act or any regulations made thereunder relating to the same may be rejected by the Registrar. Rejection of an amendment to a financing statement.

30 (2) In addition to the provisions of subsection (1), an amendment statement may also be rejected by the Registrar for any of the reasons specified in subsection (3) of section 49.

57. (1) Where in relation to a security right the secured party transfers an interest in the collateral, an amendment statement disclosing such transfer may be filed. Notice of transfer.

(2) The transferee of a security right or of receivables, which are subject of a transaction specified in section 2, shall not be required to file an amendment statement in order for the effectiveness of the registration to be continued against an administrator or a liquidator or a person referred to in section 5.

(3) Where an amendment statement is filed under subsection (1) but an interest in part of the collateral is transferred, the statement shall include a description of the interest in part of the collateral which is transferred.

(4) An amendment statement disclosing a transfer of a security right may be filed before or after the transfer.

(5) Once an amendment statement is registered, the transferee shall be regarded as the secured party for the purposes of this Act.

(6) Where in relation to an unperfected security right the secured party transfers an interest in the collateral, a financing statement may be filed in which the transferee is disclosed as the secured party.

58. (1) If a security right has been subordinated by the secured party to the interest of another person, an amendment statement may be filed disclosing such subordination. Notice of subordination.

(2) An amendment statement referred to in subsection (1), may be filed before the registration of the financing statement relating to the security right expires.

59. (1) Any person may search the Register subject to such condition or exception and in such manner as may be prescribed, including any requirement pertaining to the payment of a fee. Searches.

5 (2) A search result that is certified by the Registrar may be received in evidence in any court, as *prima facie* proof of the substance contained therein.

60. (1) Where a financing statement is registered and one of the conditions set out in Column I of the Table set out below is satisfied, the debtor or any person with an interest in the property which falls within the description of the collateral in the financing statement, may give a notice in writing (hereinafter referred to as a "requirement notice") to the secured party named in the financing statement or its authorized agent. Debtor etc, may require amendment statement.

(2) The requirement notice shall-

(a) specify the condition which is satisfied ;

(b) require the secured party to file an amendment statement, specifying the effect as indicated in Column II of the Table set out below, corresponding to the condition set out in Column I of the Table; and
20

(c) inform the secured party that the failure to comply with the requirement notice may result in the person who gives the notice, filing the appropriate amendment statement.
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TABLE

	COLUMN I	COLUMN II
	<i>Condition</i>	<i>Effect</i>
5	That the obligation under all the security agreements to which the financing statement relates has been performed.	To discharge the registration.
10	That the secured party has agreed to release part or all of the collateral described in the financing statement.	To amend or discharge the registration so as to reflect the terms of the security agreement.
15	That the description of the collateral in the financing statement includes an item or a kind of property that is not a collateral under a security agreement between the secured party and the debtor.	To amend the description of collateral to exclude items or kinds of property that are not collateral under the security agreement between the secured party and the debtor.
20	That no security agreement exists between the persons named in the financing statement as the secured party and the debtor.	To discharge the registration, or where the debtor is not the sole debtor, to amend the registration.
25	(3) Where the person giving a requirement notice is not the sole debtor, he shall be required to give a copy of the requirement notice to every other debtor to whom the financing statement relates, within five working days of the requirement notice being issued to the secured party.	
	(4) Where the secured party fails, within fourteen working days after a requirement notice is issued, to-	
	(a) comply with such notice; or	
30	(b) (i) commence proceedings in any court having appropriate jurisdiction to obtain an Order to maintain the registration to which the requirement notice relates;	

- (ii) notify the person who issued the notice; and
- (iii) file in the prescribed form with the Registrar, information about the case number and date of commencement of the proceedings,

5 the person who issued the requirement notice may file an amendment statement as requested by such notice.

(5) Where the court does not give an Order in any proceeding commenced under subsection (4) within thirty working days or within such longer period as the court may
10 direct, the person who issued the requirement notice may file an amendment statement as requested by such notice.

(6) The provisions of subsection (4) and (5) shall not apply to a trust case and in such a case, a court having appropriate jurisdiction may on application made in that
15 behalf by a person issuing the requirement notice, direct that the registration be amended or discharged, if-

- (a) one or more of the conditions specified in the requirement notice are satisfied; and
- (b) the secured party does not comply with the
20 requirement notice for the purpose of giving effect to the Order, and the court may make such Order as it deems appropriate for the purpose of giving effect to the direction issued by it.

(7) A requirement notice required to be issued under this
25 section, shall be issued in such manner as may be prescribed.

(8) For the purpose of this section, a "trust case" means a case in which the financing statement discloses that the secured party is a trustee.

- 61.** (1) Where any person without a reasonable cause- Entitlement to damages for incorrect filing.
- (a) files a financing statement confirming the existence of a security right under an agreement, which in fact does not exist; or
- 5 (b) files a financing statement confirming that the debtor has consented to the filing of such financing statement, when in fact the debtor has not consented to such filing,

the debtor shall have a right to recover damages from that
 10 person for any loss or damage caused to the debtor that was reasonably foreseeable as likely to have resulted from such filing.

(2) Where a secured party fails to forward a copy of the verification statement to the debtor within ten working days
 15 of receiving a copy of the same under subsection (2) of section 52, the debtor shall have a right to recover damages from such person for any loss or damage that was reasonably foreseeable as likely to result from such failure.

- 62.** (1) A person who-
- 20 (a) obtains an order for the appointment of a receiver or a receiver and manager of a company's property; or
- (b) appoints a receiver or a receiver and manager
 25 of a company's property under powers contained in an instrument,

shall be required to register such appointment with the Registrar within seven days of making such appointment.

(2) A receiver or a receiver and manager of a company's property appointed by virtue of an instrument and who ceases
 30 to act as such, shall be required to file an amendment statement.

(3) A notice issued under this section shall be in the prescribed form and be issued in the prescribed manner.

(4) A person who fails to comply with the requirements imposed by this section commits an offence and be liable on conviction before a Magistrate's Court to a fine not exceeding one hundred thousand rupees.

63. (1) The filing of a financing statement or an amendment statement shall not constitute constructive notice or actual knowledge of its existence or contents, to any person.

Filing of a finance statement not to constitute a notice.

(2) A purchaser who, in the ordinary course of business purchases any collateral, shall not be required to inquire as to whether-

(a) the collateral has been charged or pledged or in the case of receivables, sold; or

(b) the disposition constitutes a breach of the terms of the charge.

PART VII

GENERAL PROVISION

64. (1) Any legal or equitable principle governing the rights and obligations arising under a security agreement shall, except in so far as they are inconsistent with any provision of this Act, continue to be applicable.

Inconsistency with the provisions of this Act.

(2) All obligations arising under a security agreement under this Act or under any other law shall be exercised and discharged in good faith and in a commercially reasonable manner.

65. If a person fails without a reasonable cause to discharge any obligation imposed on such person by this Act, the person to whom such obligation is owed shall have a right to be compensated for any damage or loss caused to such person, which is reasonably foreseeable as likely to have resulted from such failure. Action for damages.
66. On an application made to a court having appropriate jurisdiction by a person having an interest in the collateral, such court shall have the power to make one or both of the following Orders:- A court's power to determine priorities and entitlements to collateral.
- (a) an Order determining a question relating to the priority or entitlement to the collateral;
- (b) an Order extending or abridging, conditionally or otherwise, the time periods granted under this Act for the compliance with any requirements imposed by or under this Act.
67. The serving of any notices required to be carried out under the provisions of this Act, shall be carried out in accordance with the relevant provisions pertaining to the same contained in the Civil Procedure Code (Chapter 101). Service of notices.
68. (1) Except as otherwise specifically provided for in this Act, in the event of any conflict between the provisions of this Act and any other law, the provisions of this Act shall prevail. Conflicts with the provisions of any other law.
- (2) Notwithstanding the provisions of subsection (1), in the event of a conflict between the provisions of this Act and the provisions of any other law providing for the protection of consumers, the provisions of such other law shall prevail.
69. The members of the Board and the Registrar and other officers and employees of the Authority shall be deemed to be public servants, within the meaning and for the purposes of the Penal Code (Chapter 19). Members, the Registrar and officers and employees, deemed to be public servants.

70. The Authority shall be deemed to be a Scheduled Institution within the meaning and for the purposes of the Bribery Act (Chapter 26) and the provisions of that Act shall be construed accordingly.

Authority deemed to be a Scheduled Institution.

5 **71.** (1) All expenses incurred by the Authority in any suit or proceeding brought by or against it before any court, shall be paid out of the Fund of the Authority and any cost paid to or recovered by the Authority in any such suit or proceeding, shall be credited to the Fund of the Authority.

Expenses to be paid out of the Fund of the Authority.

10 (2) Any expenses incurred by a Member of the Board, by the Registrar or any officer or employee of the Authority, in any suit or proceeding brought by or against such person before any court, in respect of any act which is done or purported to be done by such person by or under this Act or
15 on any direction issued by the Board, as the case may be, shall, if the court holds that such act was done in good faith, be paid out of the Fund of the Authority, unless such expenses are recovered by that person in such suit or proceedings.

20 **72.** (1) The Minister may from time to time make regulations in respect of any matter required by this Act to be prescribed or in respect of which regulations are required or authorized to be made under this Act.

Regulations.

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

30 (3) Every regulation made by the Minister shall, no later than six months after its publication in the *Gazette*, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of its disapproval, but without prejudice to anything previously done thereunder.

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

5 **73.** (1) The Board may make rules in respect of matters Rules.
for which rules are authorized or required to be made under this Act or which it may consider necessary for the purpose of achieving its objective.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Board may
10 make rules in respect of the following matters:-

- (a) the manner and mode of application for registration of security rights and of judgment creditors; and
- 15 (b) amount of fees or charges to be levied in respect of services that are provided by the Authority.

(3) All rules made by the Board under subsection (1) shall be approved by the Minister and be published thereafter in the *Gazette*.

20

PART VIII

REPEALS AND SAVINGS

74. (1) The Secured Transactions Act, No. 49 of 2009 Repeal and savings.
is hereby repealed.

25 (2) Notwithstanding the repeal of the Secured Transactions Act, No. 49 of 2009, a security right that was registered under the repealed Act shall continue to be a valid security right, for the purpose of satisfying the requirements specified in paragraph (b) of section 4 of this Act.

(3) Any civil or criminal proceeding instituted under the repealed Secured Transactions Act, No. 49 of 2009 in relation to an instrument creating-

- 5 (a) a pledge, mortgage or bill of sale of any movable property; or
- (b) (i) an interest in a fixture of any immovable property; or
- 10 (ii) an assignment of a right to payment under a mortgage, charge or a lease of any immovable property where the assignment does not convey or transfer the assignor's interest in the immovable property,

15 which has been registered under this Act in terms of section 9 of the Registration of Documents (Amendment) Act, No. of 2019 shall be deemed to have been instituted under this Act.

PART IX

INTERPRETATION

20 **75.** (1) In this Act, unless the context otherwise Interpretation. requires-

“accessions” means goods that are installed in or affixed to other goods;

25 “account” means a monetary obligation not evidenced by a chattel paper, a security or an instrument, whether or not the obligation has been earned by performance;

“acquisition security right” means-

- (a) a security right taken or reserved in a collateral to secure payment of all or part of its price;
- 5 (b) a security right taken in a collateral by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that the value is applied to acquire the rights; or
- 10 (c) the interest of a lessor of goods under a lease for a term over one year,

but does not include a transaction of sale by and lease-back to the seller;

15 “amendment statement” means, a statement that satisfies the requirements imposed by this Act and any regulations made thereunder and which is filed by the secured party or its agent, under section 54, 55, 57, 58 or 60 of this Act;

20 “Bureau” means, the Credit Information Bureau of Sri Lanka established by the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990;

“certified security” means, a security represented by a certificate that-

- 25 (a) provides that the person entitled to the securities is the person in possession of the certificate; or
- (b) identifies the person entitled to the securities;

“chattel paper” means, a document in writing that evidence, both a monetary obligation and a security right, in or lease of, specific goods;

“collateral” means, any movable property that is subject to a security right;

5 “commercially reasonable” means, the adoption of a procedure in the disposition of a collateral under such conditions as may be considered reasonable according to the prevailing circumstances, calculated to obtain the best market price for the same considering the prevailing circumstances;

10 “consumer goods” means, goods that are used or acquired primarily for consumption or for any household purpose;

“debtor” means-

15 (a) a person who owes a payment or the performance of an obligation that is secured, and who owns or has rights in the collateral;

(b) a purchaser under a hirepurchase agreement or a lessee under a lease for a term over one year;

20 (c) a purchaser who acquires goods subject to a retention of title clause or under a conditional sale; and

(d) a transferor of an account or chattel paper,

and includes the transferee of a debtor’s interest in the collateral, where the context so permits;

25 “default” means-

(a) the failure to pay or otherwise perform the obligation secured when due; or

(b) the occurrence of any event or a set of circumstances whereupon, under the terms of the security agreement, the security right becomes enforceable;

5 “diminution in value” means, the difference between before and after, of the value of any property which has been damaged;

“document of title” means, a writing issued by or addressed to a bailee, that -

10 (a) covers goods in the bailee’s possession that are identifiable or that are fungible portions of an identifiable mass; and

(b) is in the ordinary course of business, treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;

15

“equipment” means, goods that are not an inventory or consumer goods;

20 “financing statement” means, a statement containing the data required under paragraph (c) of subsection (1) of section 50, and, where the context so permits, includes an amendment statement and, a document registered under the Registration of Documents Ordinance (Chapter 117), together with any writing that accompanies or was registered to rectify, amend or renew such registration;

25

“fungible collateral” means, goods of such nature or kind as can be freely exchangeable or replaceable in whole or in part, for another of a like nature or kind;

30 “future advance” means, the advance of any money, credit or other value secured by a security agreement, whether or not such advance is made pursuant to a commitment;

5 “goods” means, movable property other than chattel paper, documents of title, instruments, money and investment property, and includes fixtures, growing crops, the unborn young of animals, timber to be cut and minerals and hydrocarbons to be extracted;

“instrument” means -

- 10 (a) a bill of exchange, a promissory note or a cheque within the meaning of the Bills of Exchange Ordinance (Chapter 82);
- (b) a letter of credit or an advance of credit, if the letter or advance states that it must be surrendered upon claiming payment thereunder; and
- 15 (c) any other writing that establishes a right to payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment,

20 but does not include a writing that constitutes a part of chattel paper, documents of title, instruments, money or investment property;

“intangible” means, movable property including choses in action that is not goods, chattel paper, documents of title, instruments, money or investment property;

25 “inventory” means, goods that are-

- (a) held by a person for sale or lease or that have been leased by that person as a lessor;
- (b) to be furnished or that have been furnished under a contract or service;
- 30 (c) raw materials or work in progress;

(d) material used or consumed in any business or profession;

5 “lease for a term over one year” includes a series of short term leases of the same asset that in aggregate exceeds one year, but does not include-

(a) a lease of goods by a lessor who is not regularly engaged in the business of leasing goods;

10 (b) a lease of household furnishing or appliances as part of a lease of immovable property where the goods are incidental to the use and enjoyment of the immovable property; or

(c) a lease of goods of a prescribed kind, regardless of the length of the term of lease;

15 “minerals” includes oil, gas and hydrocarbons;

“Minister” means, the Minister to whom the implementation of the provisions of this Act is assigned;

“movable property” means-

20 (a) goods, a document of title, chattel paper, security, instrument, money or any intangible property; or

(b) (i) an interest in a fixture of any immovable property; or

25 (ii) an assignment of a right to payment under a mortgage, charge or a lease of any immovable property, where the assignment does not convey or transfer the assignor’s interest in the immovable property;
30

“notice of change” means, data included in any prescribed form required to be submitted to the Bureau, in order for a financing statement to be discharged or otherwise amended;

5 “notice of judgment” and “notice of claim” means, the data in any prescribed form required to be registered with the Board to effect a registration under this Act, and where the context so admits, includes the data authorized in order to give effect to an
10 amendment, renewal or discharge of such registration;

“obligation secured”, for the purpose of determining the amount payable under a lease that secures payment or performance of an obligation, means -

15 (a) the amount originally contracted to be paid as rent under the lease; and

(b) all other amounts payable under the terms of the lease, including the amount, if any, required to be paid by the lessee to obtain
20 ownership of the collateral, less the amounts paid;

"pawnbroker" shall have the same meaning as given to that term in the Pawnbrokers Ordinance (Chapter 90);

25 "pledgor" means, a person who delivers goods in pledge or for pawn to a pawnbroker;

"prescribed" means prescribed by regulations made under this Act;

30 "proceeds" means, identifiable or traceable movable property in any form derived directly or indirectly

from any dealing with the collateral or the proceeds therefrom, and includes-

5 (a) any payment representing an indemnity or compensation for loss or damage caused to the collateral, including a right to an insurance payment or proceeds therefrom; and

(b) any payment made in total or partial discharge or redemption of chattel paper, an instrument or any intangible;

10 “purchase” includes obtaining by sale, lease, mortgage, pledge, lien, gift or any other consensual transaction creating an interest in movable property;

15 “registered interest” means, a right in immovable property that is registered with a competent authority;

“secured party” means-

(a) a person who holds a security right for the person’s own benefit;

20 (b) a person who holds a security right for the benefit of another person;

(c) a trustee, if a security right is embodied in a trust indenture; and

(d) where the context so admits, includes a receiver;

25 “security agreement” means, an agreement that creates or provides for a security right and includes a document evidencing a security right;

“security right” means, an interest in movable property that secures payment or performance of an

obligation and includes, whether or not the interest secures payment or performance of an obligation, the interest of-

5 (a) a lessor under a lease for a term over one year; and

(b) a transferee of an account or chattel paper;

10 “trust indenture” means, any security agreement by the terms of which a body corporate, with or without a share capital and wherever or however incorporated, issues or guarantees debt obligations or provides for the issue or guarantee of debt obligations, and appoints a person as trustee for the holders of the debt obligations so issued, guaranteed or provided for; and

15 “value” means, any consideration sufficient to support a contract and includes an antecedent debt or liability, and accordingly "new value" means value other than an antecedent debt or liability.

20 (2) Except as otherwise expressly provided for by this Act, the determination as to whether any goods are “consumer goods”, “inventory” or “equipment”, shall be made at the time the security right is created.

25 (3) Proceeds are traceable, whether or not there is a fiduciary relationship between the person who has a security right in the proceeds as provided in section 35 and the person who has rights in or has dealt with the proceeds.

(4) For the purpose of this Act, a “receiver” includes a receiver manager.

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

Sinhala text to prevail in case of inconsistency.

