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| 2 | *Secured Transactions* |

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

**Part II of November 10, 2023**

**SUPPLEMENT**

*(Issued on 10.11.2023)*



**SECURED TRANSACTIONS**

**A**

**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 , DUTIES AND FUNCTIONS 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 REGISTER OF SECURITY RIGHTS IN MOVABLE PROPERTY; TO REPEAL THE SECURED TRANSACTIONS ACT, NO.49 OF 2009; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.**

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| *Secured Transactions* | 1 |

**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 , DUTIES AND FUNCTIONS 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 REGISTER OF SECURITY RIGHTS IN MOVABLE PROPERTY;**  **TO**  **REPEAL**  **THE**  **SECURED TRANSACTIONS ACT, NO.49 OF 2009; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.**

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

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| 5 | 1. (1)This Act may be cited as the Secured Transactions Act, No. of 2023. | Short title  and date of  operation |
| (2) The provisions of this Act, other than the |
| provisions of this section, shall come into operation on such |
| 10 | date as the Minister may appoint by Order published in the |
| *Gazette* (in this Act referred to as the “appointed date”)*.* |
| *(3) The provisions of this section shall come into* |
| *operation on the date on which the Bill becomes an Act of* |
| *Parliament.* |

PL 014096 - 475 (10/2023)

*Secured Transactions*  2

**PART I**

**PRELIMINARY**

|  |  |  |  |
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| 5 | **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,- |
| 10 |
| 15 | (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;

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| 20 | (b) | | to a transfer of an account or chattel paper, even where such transfer may not secure payment or performance of an obligation; and | E x e m p t i o n from the appli cation of the Act |
| 25 | (c) | to a lease for a term over one year, even | |
| where such lease may not secure payment | | |
| or performance of an obligation. | | |
| 30 | **3. (**1) Unless otherwise provided for in this Act, the provisions of this Act shall not apply to- | | |
| (a) | | any lien granted by or under any law unless otherwise provided, and to any non-consensual lien that is recognized by courts; |

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| (b)  (c)  (d)  (e) | *Secured Transactions* | 3 |
| 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;  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;  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;  the creation or the transfer of an interest in any immovable property, including a mortgage, charge or lease of any such property, other than- | |

(i) an interest in a fixture; or

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

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| (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; |

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| 5 | *Secured Transactions* | | 4 | Attaining |
| (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)**;** | |
| 10 | (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 | |
| 15 | (k) | the transfer of an interest in goods held by | |
| a debtor where the goods are registered | | |
| under the Motor Traffic Act (Chapter 203), | | |
| 20 | 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 LankaAct, 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**.** | | |
| 25 | **4.** A security right shall be considered to have been perfected, when- | | |
| perfection |
| 30 | (a) | it has been validly created in terms of Part | | Subordination of  unperfected  security  rights |
| 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- | | |

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| 5 | (2) | *Secured Transactions* | | | 5 |
| (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 | | | |
| 10 | (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). | |
| An unperfected security right in- | | | |
| (a) | collateral, shall not be effective against- | | |
| 15 |
| (i) an assignee in any insolvency | | | |
| proceedings**,** if the security right is unperfected at the time of the | | | |
| bankruptcy; or | | | |
| (ii) a liquidator appointed under the Companies Act, No. 07 of 2007, if the security interest is unperfected when the winding up order is made; | | | |
| 20 |
| 25 | (b) | chattel paper, documents of title or goods | | |
| shall not be effective against a transferee thereof, if the transferee- | | | |
| (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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| 30 | (iii) receives delivery of the collateral, without knowledge of the security right; and |

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| 5 | (c) | *Secured Transactions* | 6 |
| tangibles other than accounts shall not be | |
| effective against a transferee thereof, if the | |
| transferee- | |
| (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.

10 **PART II**

**ESTABLISHMENT OF THE SECURED**   
**TRANSACTIONS REGISTRATION AUTHORITY**

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| 15 | **6.** (1) There shall be established an authority called the | Establishment of the Secured Transaction**s** Registration Authority |
| Secured Transaction**s** Registration Authority (in this Act |
| referred to as the “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.

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| 20 | **7.** The objectof the Authority shall be to promote the | Object of the Authority |
| 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. |

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| 5 | *Secured Transactions* | | | 7 | Duties and functions of the Authority | |
| **8.** The duties and functions of the Authorityshall be- | | | |
| (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 | | Powers of the Authority | |
| determine the fees or any other charges to | | | |
| be levied for services rendered by the | | | |
| Authority; and | | | |
| (e) | to perform and discharge such duties and | | |
| 15 | functions that are specifically assigned to | | | |
| the Authority by or under this Act. | | | |
| **9.** The Authorityshall exercise such powers as may become necessary or appropriate in order to achieve its objectand for the effective performance and discharge of the duties and functions assigned to it by section 8 of this Act. | | | |
| 20 | **10.** (1) The administration and management of the affairs of the Authority shall be vested in a Board of Directors (in this | | | | Board | of |
| Directors of | |
| the Authority | |
| 25 | Act referred to as the “Board”), consisting of the following | | | |
| members:- | | | |
| (a) | the Governor of the Central Bank of Sri | | |
| Lanka, or a person nominated by him as his | | | |
| representative, who shall be the Chairperson | | | |
| of the Board; | | | |
| (b) | | the Secretary to the Treasury or a person nominated by him as his representative; | |

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| 5 | (c) | *Secured Transactions* | 8 |
| 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. | |

(2) The Board shall, for the purpose of administering and managing the affairs of the Authority, exercise, perform and discharge the powers, duties and functions conferred on, assigned to or imposed on, the Authority by this Act.

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| 10 | (3) The Registrar of the Authority shall be the Secretary to the Board and shall be responsible for maintaining a record of the minutes of all meetings of the Board. | Meetings of the Board |
| 15 | **11**. (1) The Board shall meet at least once in every quarter and the Chairman shall preside at all meetings of the Board. In the absence of the Chairman from any meeting of the Board, the members present shall elect a member from among themselves, to preside at such meeting. |
| 20 | (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. | Seal of the |
| (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 the case of an equality of votes, the Chairman or the member presiding at the meeting, shall, in addition to his vote, have a casting vote. |
| 25 |
| (4) Any act, proceeding or decision of the Board shall not 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 Board. |
| 30 |
| **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. |
| Authority |

*Secured Transactions*  9

(2) The seal of the Authority shall be in the custody of

the Secretary to the Board.

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| 5 | (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 document in token of their presence. | | | Fund of the |
| 10 | (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. | | |
| Authority |
| 15 | (2) There shall be credited to the Fund of the Authority- | | | F i n a n c i a l  year and  the audit of  accounts |
| (a) | all such sums of money as may be voted from time to time by Parliament for the use of the Authority; | |
| (b) | | all such sums of money received as fees or charges imposed in respect of services rendered by the Authority; and |
| 20 |
| (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. | |
| 25 | (3) There shall be paid out of the Fund of the Authority all such sums of money required to defray the expenditure incurred by the Authority in the exercise, performance and discharge of its powers, duties and functions under this Act. | | |
| **14**.(1) The financial year of the Authority shall be the calendar year. | | |
| 30 | (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. | | |

*Secured Transactions*  10

(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.

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| 5 | **15.** The provisions of Part II of the Finance Act, No. 38 of 1971 shall, *mutatis mutandis,* apply to and in respect of the | Application of Part II of the Finance Act, No. 38 of 1971 |
| financial control and maintenance of accounts of the |
| Authority. |
| 10 | **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 of the Authority 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 |
| 15 | (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 execrcise, performance and discharge of all the powers,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. |
| 20 |

(3) The Registrar shall not be liable for anything done by himin good faith, in the exercise,performance or discharge of any power,duty or function assigned to him by or under this Act.

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| 25  30 | (4) The Board may, with the concurrence of the Minister and for reasons assigned therefor, remove from office the Registrar appointed under subsection (1).  (5) The Registrar may, with the written approval of the Board and whenever he considers it necessary to do so, delegate in writing to any officer of the Authority, any power, duty or function assigned to him by or under this Act and such officer shall exercise,perform or discharge such power, duty or function, subject to the general or specialdirection and control of the Registrar. |

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| 5 | *Secured Transactions* | 11 | Staff of the Authority |
| **17**. (1) The Authority may appoint such officers and employees as it considers necessary for the efficient exercise, performance and dischargeof its powers, duties and functions as may be assigned by or under this Act. | |
| (2) At the request of the Authority, any officer in the | |
| public service may, with the consent of that officer and the | |
| 10 | Secretary to the Ministry under which that officer is employed | |
| and the Public Service Commission, be temporarily appointed | |
| to the staff of the Authority for such period as may be | |
| determined by the Authority, or with like consent, be | |
| 15 | permanently appointed to such staff. | |
| (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. | |
| 20 | (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. | |
| 25 | (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 be | |
| regarded as service to the Government for the purpose of | |
| 30 | discharging the obligations of such contract. | |
| (6) At the request of the Authority, any officer of , | |
| Provincial Public Service may, with the consent of that officer | |
| and the relevant Provincial Public Service Commission, 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. | |

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| 5 | *Secured Transactions* | 12 | Remunerations to be paid to the Registrar and officer**s** and emplo yees of the Authority |
| **18.** The Registrar and all other officers and employees of the Authority shall be paid such remuneration and other | |
| 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. | |

**PART III**

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| 10 | **CREATION OF SECURITY RIGHTS AND RIGHTS OF PARTIES** | | Freedom of |
| **19.** (1) Except as otherwise provided for in this Act or in any other law, a security agreement shall be effective according to its terms between the parties to the agreement and against a third party. | |
| contract |
| 15 | (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. | | Creation of a security right |
| 20 |
| (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's Court shall have the power, upon an | |
| 25 |
| application made in that behalf by the debtor, to make an | |
| order for the delivery of such copy to the debtor. | |
| **20.** (1) A security right including a security right in the nature of a floating charge,attaches when- | |
| 30 | (a) | the value is given; |
| (b) | the debtor has rights in the collateral or the |
| power to transfer rights in the collateral to | |
| a third party; and | |

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| 5  10 | *Secured Transactions* | | 13 |
| (c) | (i) the debtor has signed an agreement that | |
| contains a description of the collateral  sufficient to enable it to be identified;  or  (ii) the collateral is in the possession of the secured party or any other person on behalf of the secured party.  (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).

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| 15 | **21**. (1) Subject to the provisions of subsection (2), a security agreement may cover anyproperty acquired after entering | Security in  m o v a b l e  p r o p e r t y  acquired  after the  agreement |
| 20 | into such agreement: |
| 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-

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| 25 | (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 |
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| 5 | (b) | *Secured Transactions* | 14 |
| in respect of consumer goods other than accessions, unless- | |
| (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.

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| 10 | **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 |
| 15 | **23.** An agreement by a debtor not to assert against an assignee any claim or a defence that such debtor has against | | | Agreement |
| not to assert |
| d e f e n c e |
| the debtor’s seller or lessor, shall be enforceable by the | | |
| against an |
| assignee who takes such assignment for value in good faith | | |
| assignee |
| and without notice, except as to any defences that may be | | |
| 20 | asserted against the holder in due course of a negotible | | | Application  of the Sale  of Goods  Ordinance |
| instrument under the Bills of Exchange Ordinance (Chapter | | |
| 82). | | |
| **24**.Where a seller retains an acquisition security right in any goods sold- | | |
| 25 | (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 |
| 30 | (b) | except as provided for in section 23, the | |
| conditions and warranties in a sale | | |
| agreement shall not be affected by any | | |
| security agreement. | | |

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| 5 | *Secured Transactions* | 15 | Acceleration |
| **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 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 in jeopardy. | |
| clauses |
| 10 |
| 15 | **26.** (1) A secured party shall exercise reasonable care in the custody and preservation of any collateral in the secured | | Custody and preservation of collateral by a secured party |
| party’s possession and unless otherwise agreed upon, in the | |
| case of a chattel paper or an instrument, reasonable care 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-

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| 20 | (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; |
| 25 | (b) |
| any risk, loss or damage, except if caused |
| 30 | (c) | due to the negligence of the secured party, |
| shall be on the debtor, to the extent of any |
| deficiency in any insurance coverage; |
| 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 |

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| 5  10 | *Secured Transactions* | | 16 |
| (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 – | | |
| (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-

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| 15 | (a) | in the manner and to the extent provided for in the security agreement; | | Obtaining  information  about the  s e c u r i t y  agreement |
| 20 | (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- | | |
| 25 | (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; | | |
| 30 | (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; | | |

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| 5 | (c) | *Secured Transactions* | 17 |
| 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 | |
| (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.

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| 10  15  20  25  30 | (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).  (4) Subject to the payment of any fee 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 partywithout a reasonable excuse- | | |
| (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 | |
| (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 sub-section (1) no longer has an interest in the obligation or prop-erty of the debtor that is the subject matter of the notice, such person shall, within fifteen days of the receipt of such notice, | | |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 5 | *Secured Transactions* | | | 18 | Power of court to issue an order of compliance |
| disclose the name and address of the immediate successor in | | | |
| such interest, and if known, the latest successor to such inter- | | | |
| est. If such person fails to make such disclosure without a | | | |
| reasonable excuse, the person making the request shall, in | | | |
| addition to any other remedy that may be provided for by this | | | |
| Act, be entitled to apply to court under section 28, for an | | | |
| 10 | 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 ad- | | | |
| vance, for each request made, however, a debtor shall be | | | |
| entitled to a reply free of charge, once in every six months. | | | |
| 15 | **28.** (1)On an application made in that behalf, a Magistrate's Court having jurisdiction shall have the power to make an | | | |
| order- | | | |
| (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; | | |
| 20 | (b) | | exempting the secured party either wholly | |
| or partly from complying with the notice | | | |
| given under subsection (1) of section 27; | | | |
| 25 | (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. | |
| 30 | (2)Any person who fails to comply with an order | | | |
| made by a Magistrate under subsection (1) commits 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 | | | |
| imprisonment. | | | |

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**PART IV**

**PERFECTION**

|  |  |  |  |
| --- | --- | --- | --- |
| 5 | **29.** (1) Subject to the provisions of section 4 of this Act, | | Perfection of |
| possession of the collateral by the secured party or by any | | a security |
| right |
| other person on behalf of the secured party, shall perfect a | |
| 10 | security right in- | |
| (a) | a chattel paper; |
| (b) | goods; |
| (c) | an instrument; |
| (d) | a certified security; and |
| (e) | money. |

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

(3) For the purposes of subsection (1), the collateral

|  |  |
| --- | --- |
| 15 | 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.

|  |  |  |  |
| --- | --- | --- | --- |
| 20 | **30.** (1) A security right which is perfected by possession | | Temporary |
| in- | | perfection |
| (a) | an instrument or a certificate that a secured |

party delivers to the debtor, for the purpose   
of-

|  |  |  |
| --- | --- | --- |
| 25 | (i) | a sale or an exchange; |

(ii) presentation, collection or renewal;   
 or

(iii) registration of a transfer; or

(b) a negotiable document of title or goods held   
 by a bailee that is not covered by a

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negotiable document of title, which   
document of title or goods the secured   
party makes available to the debtor, for the   
purpose of-

|  |  |  |
| --- | --- | --- |
| 5 | (i) | a sale or an exchange; |

(ii) loading, unloading, storing,   
shipping or trans-shipping; or

(iii) manufacturing, processing, packaging or dealing with goods in 10 any other manner, prior to their sale or exchange,

shallremain 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   
15 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.

|  |  |  |  |
| --- | --- | --- | --- |
| 20 | **31.** (1) Where dealing with a collateral gives rise to | | Perfection |
| proceeds, the security right in such collateral- | | as to |
| proceeds |
| (a) | continues, unless the secured party |
| expressly or impliedly authorizes the | |

dealing with the collateral free of the   
security right; and

|  |  |  |
| --- | --- | --- |
| 25 | (b) | extends automatically to the proceeds, |
| even though it may not be covered by the |

security agreement.

(2) If a secured party enforces a security right against

|  |  |
| --- | --- |
| 30 | 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.

(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.

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(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

|  |  |  |
| --- | --- | --- |
| 5 | in the proceeds is perfected under this Act. | Perfection |
| **32.** (1) Subject to the provisions of section 4 of this Act, a |
| 10 | security right in goods in the possession of a bailee who has | where the |
| goods are |
| issued a negotiable document of title covering it, is perfected |
| held by a |
| by perfecting a security right in the document, and any security |
| bailee |
| 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.

(2) A security right in collateral in the possession of a   
person other than the debtor, the debtor’s agent or a bailee 15 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

|  |  |  |  |
| --- | --- | --- | --- |
| 20 | (c) | registration. | Perfection |
| **33.** (1) Where a debtor sells or leases goods that are subject | |
| 25 | to a security right, the security right reattaches to the goods, | | and priority |
| of returned, |
| if- | |
| seized or |
| (a) | the buyer or lessee has taken the goods | repossessed |
| goods |
| free of the security right, under paragraph | |

(a) of subsection (1) of section 31or   
subsection (1) or (2) of section 34; and

(b) the obligation secured remains unpaid or   
 unperformed.

|  |  |
| --- | --- |
| 30 | (2) Where a security right in goods reattaches in the circumstances referred to in subsection (1), any question as |

to-

|  |  |  |
| --- | --- | --- |
| 22 | (a) | *Secured Transactions* |
| 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 5 leased.

(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

10 chattel paper shall have a security right in such goods.

(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 15 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) If a transferee of an account obtains a perfected security right in goods under subsections (3) and (4), for the

|  |  |
| --- | --- |
| 20 | 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.

(6) Where a transferee of chattel paper obtains a

|  |  |  |
| --- | --- | --- |
| 25 | perfected security right in goods under subsections (3) and (4), then as between- | |
| (a) | the transferee and the holder of a perfected |

security right that attached under   
subsection (1), the person who had priority

|  |  |  |
| --- | --- | --- |
| 30 | (b) | to the chattel paper shall also have priority |
| to the goods; and |
| the transferee and a person other than the |

holder of a perfected security right that

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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

|  |  |
| --- | --- |
| 5 | right in the goods at the time the transferee’s security right in the chattel |

paper was perfected.

|  |  |  |
| --- | --- | --- |
| 10 | **34**.(1) A buyer of goods from a seller who sells the goods | Transaction**s** |
| in the ordinary course of business, takes them free of any | in the |
| security right therein given by the seller, even though it is | ordinary |
| course of |
| perfected and the buyer knows of it, unless the buyer was |
| business |
| also aware that the sale constituted a breach of the security |

agreement.

(2) The provisions of subsection (1) shallbecome

15 applicable, whether or not-

(a) the buyer took possession of the goods;

(b) the seller was in possession of the goods   
 at any time;

|  |  |  |
| --- | --- | --- |
| 20 | (c) | the title to the goods passed to the buyer; |
| (d) | or |
| the seller took a security right in the goods. |

(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

|  |  |
| --- | --- |
| 25 | any security right therein given by the lessor, unless the lessee was also aware that the lease constituted a breach of |

the security agreement.

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

|  |  |  |
| --- | --- | --- |
| 30 | (a) | the lessee took possession of the goods; |

or

|  |  |  |
| --- | --- | --- |
| 24 | (b) | *Secured Transactions* |
| the lessor was in possession of the goods |

at any time.

(5) A purchaser of chattel paper who takes possession of it in the ordinary course of business and gives new value,

5 has priority over any security right in it that-

(a) was perfected by registration, if the   
 purchaser was not aware at the time of   
 taking possession that the chattel paper   
 was subject to a security right; or

|  |  |  |
| --- | --- | --- |
| 10 | (b) | has attached to proceeds of an inventory |

under section 31, whatever the extent of   
the purchaser’s awareness.

(6) A purchaser of collateral that is an instrument or negotiable document of title, has priority over any security

|  |  |  |
| --- | --- | --- |
| 15 | 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

|  |  |  |  |
| --- | --- | --- | --- |
| 20 | right; and | | Negotiable |
| (c) | has taken possession of the collateral. |
| **35.** The rights of a person who is – | |
| 25 | (a) | a holder in due course of a bill, note or | instruments, |
| &c |
| cheque within the meaning of the Bills of | |
| Exchange Ordinance (Chapter 82); or | |
| (b) | a transferee from the debtor of money, |

30

shall not be affected by any provisions of this Act.

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**PART V**

**PRIORITIES**

|  |  |  |  |
| --- | --- | --- | --- |
| 5 | **36.** (1) The following general rules of priority shall apply | | General rules |
| to security rights in the same collateral:- | | governing |
| priority |
| (a) | priority between security rights perfected |
| by registration shallbe determined by the | |

date of registration, regardless of the date   
of perfection;

|  |  |  |
| --- | --- | --- |
| 10 | (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

|  |  |  |
| --- | --- | --- |
| 15 | (c) | priority between unperfected security |

rights shall be determined by the date of   
the creation of such security rights.

(2) For the purpose of subsection (1)-

|  |  |  |
| --- | --- | --- |
| 20 | (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

(b) the time of registration, possession or   
 perfection of a security right in the original

|  |  |
| --- | --- |
| 25 | collateral, shall be the time of such registration, possession or perfection of the |

security right in its proceeds.

(3) The transferee of a security right shall acquire the same priority with respect to the security right as the transferor

30 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.

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(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-

|  |  |  |
| --- | --- | --- |
| 5 | (a) | advances made before the judgment |
| (b) | creditor registers the notice of judgment |
| referred to in that paragraph; |
| advances made before the secured party |

has knowledge of the registration of the   
notice of judgment referred to in that

|  |  |  |
| --- | --- | --- |
| 10 | (c) | paragraph; |
| 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

|  |  |  |
| --- | --- | --- |
| 15 | (d) | referred to in paragraph (b); and |
| reasonable costs and expenses incurred by |

the secured party for the protection,   
preservation, maintenance or repair of the   
collateral.

|  |  |  |  |
| --- | --- | --- | --- |
| 20 | **37.** (1) An acquisition security right in inventory or its | | Priority of |
| proceeds shall have priority over any other security right in | | acquisition |
| security |
| the same collateral given by the same debtor, if - | |
| rights |
| (a) | the acquisition security right was perfected |

at the time the debtor obtained possession 25 of the inventory or a third party at the request of the debtor obtained or held possession of the inventory;

(b) before the debtor receives the possession of the inventory, the secured party of the 30 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

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right, registered a financing statement that   
describes the collateral as or as including-

(i) items or types of inventory, all or   
 some of which are the same as the

|  |  |
| --- | --- |
| 5 | items or types of inventory that will be subject to the acquisition security |

right;

(ii) inventory; or

(iii) accounts; and

|  |  |  |
| --- | --- | --- |
| 10 | (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.

|  |  |
| --- | --- |
| 15 | (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-

|  |  |  |
| --- | --- | --- |
| 20 | (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

|  |  |  |
| --- | --- | --- |
| 25 | (b) | obtained or held possession of the |
| collateral, whichever occurs earlier; or |
| in the case of an intangible collateral, was |

perfected before or within ten days after the creation of the acquisition security 30 right in the intangible collateral.

(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,

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of the seller, shall have priority over any other acquisition security right given by the same debtor.

|  |  |  |
| --- | --- | --- |
| 5 | **38.** A lien on goods that arises as a result of providing in | Priority of |
| items for |
| the ordinary course of business, materials or services in |
| materials and |
| respect of the goods, shall have priority over a perfected or |
| services |
| unperfected security right in such goods, unless the lien |

arises under any law which provides that it shall not have such priority.

|  |  |  |
| --- | --- | --- |
| 10 | **39**.(1) A perfected security right in crops or their proceeds | Security right |
| given not more than six months prior to such crops becoming | in crops |
| 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 perfected security right in the same collateral, to the extent that the earlier interest 15 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.

(2) Where more than one perfected security right is

|  |  |
| --- | --- |
| 20 | 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.

|  |  |  |  |
| --- | --- | --- | --- |
| 25 | **40.** (1) A security right in goods that attached- | | Security |
| (a) | before the goods became a fixture, shall | right in |
| fixtures |

have priority as to such fixture, over the   
claim of any person who has an interest in   
the immovable property; or

|  |  |  |
| --- | --- | --- |
| 30 | (b) | after the goods became a fixture, shall have |
| priority as to the fixture over the claim of |

any person who subsequently acquired an   
interest in the immovable property, but not   
over any person who had a registered   
interest in the immovable property at the

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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.

|  |  |  |
| --- | --- | --- |
| 5 | (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

|  |  |  |
| --- | --- | --- |
| 10 | (b) | a creditor with a prior encumbrance of |
| record on the immovable property, to the |

extent that the creditor makes subsequent   
advances,

if the subsequent purchase or the subsequent advance under a prior encumbrance of record is made or contracted without

|  |  |
| --- | --- |
| 15 | 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).

(3) Where a secured party has an interest in a fixture that has priority over the claim of a person having an interest

|  |  |
| --- | --- |
| 20 | 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 the owner of the immovable

|  |  |
| --- | --- |
| 25 | 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 30 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 35 whose name appears in the records maintained by the relevant

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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:-

|  |  |  |
| --- | --- | --- |
| 5 | (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;

|  |  |  |
| --- | --- | --- |
| 10 | (c) | the amount required to satisfy the |
| (d) | obligation secured by the security right of |
| the secured party; |
| a description of the immovable property to |

which the fixture is affixed, which is   
sufficient to enable the immovable property

|  |  |  |
| --- | --- | --- |
| 15 | (e) | to be identified; and |
| 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 20 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

|  |  |
| --- | --- |
| 25 | 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 30 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.

|  |  |  |  |
| --- | --- | --- | --- |
| *Secured Transactions* | | 31 | Security right in accession |
| **41.** (1) Subject to the provisions of subsections (2) and (3) and of section 42, a security right in goods that attached- | | |
| (a) | before such goods became an accession, | |

shall have priority as to the accession, over

|  |  |  |
| --- | --- | --- |
| 5 | (b) | the claim of any person in respect of the |
| whole**;** and |
| after the goods became an accession, shall |

have priority as to the accession, over the claim of any person who subsequently 10 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 15 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-

|  |  |  |  |
| --- | --- | --- | --- |
| 20 | (a) | subordinate to the interest of- | |
| (i) | a subsequent buyer of an interest in |

the whole of the goods; and

(ii) a creditor with a prior perfected security right in the whole of the goods, to the 25 extent that the creditor makes subsequent advances,

if the subsequent sale or the subsequent   
advance under the prior perfected security

|  |  |  |
| --- | --- | --- |
| 30 | (b) | right, is made or contracted for, before the |
| security right is perfected; and |
| subordinate to the interest of a creditor who |

registers a notice of judgment or notice of   
claim, before the security right is perfected.

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(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 5 the interest of a creditor referred to in that paragraph.

(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 todefault, remove

|  |  |
| --- | --- |
| 10 | the accession from the whole**,** if, unless otherwise agreed, the secured party reimburses any person having an |

encumbrance 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

15 absence of the accession or by the necessity of replacement.

(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.

20 (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 balance, perfected by registration against the name of the 25 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-

|  |  |  |
| --- | --- | --- |
| 30 | (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 bythe security right of

35 the secured party;

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(d) a description of the other goods sufficient   
 to enable them to be identified; and

(e) a statement of theintention to remove the   
 accession from the whole, unless the

|  |  |
| --- | --- |
| 5 | amount secured is paid on orbefore a date specified in the notice, which dateshall |

not be less than ten days after the service   
of the notice.

(7) The notice referred to in subsection (6) shall be 10 served by registered post, at least ten days before the accession is removed.

(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

|  |  |
| --- | --- |
| 15 | accordance with the provisions of subsection (4), retain the accession upon payment to the secured party of the amount |

owing in respect of the security right having priority over the person’s interest.

|  |  |  |  |
| --- | --- | --- | --- |
| 20 | **42**.(1) A perfected security right in goods that | | Security right |
| subsequently become part of a product or mass of a product, | | in processed |
| continues in such product or mass, if- | | or co- |
| mingled |
| (a) | the goods are so manufactured, |
| assets |

processed, assembled or co-mingled that   
their identity is lost in the product or in the

|  |  |  |
| --- | --- | --- |
| 25 | (b) | mass of the product; and |
| more than one security right attaches to |

the product or the mass of the product,

and the secured parties shallrank equally according to the ratio that the cost of the goods to which each interest 30 originally attached, bears to the cost of the total product or the mass.

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

|  |  |  |
| --- | --- | --- |
| 34 | (a) | *Secured Transactions* |
| shall nevertheless be treated as identifiable |

proceeds; and

(b) if at any time after the co-mingling takes place the total amount of the funds **is** found 5 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 *pro rata* basis.

|  |  |  |
| --- | --- | --- |
| 10 | **43.** A security right in a right to payment under a lease of | Right to |
| immovable property to which this Act applies, shall be | payment |
| under a lease |
| subordinate to the interest of a person who acquires for value |
| of |
| the lessor’s interest in the lease or in the immovable property | 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 15 registry office before the interest or notice thereof of the secured party is registered in such relevant land registry office.

|  |  |  |
| --- | --- | --- |
| 20 | **44**.A security right in a payment under a mortgage or | Right to |
| charge of immovable property to which this Act applies, shall | payment |
| under a |
| be subordinate to the interest of a person who acquires for |
| mortgage of |
| value the mortgagee’s or chargee’s interest in the mortgage | immovable |
| or the charge, if the interest of the person is registered in the | property |

relevant land registry office before a notice of the security right is registered in such relevant land registry office.

|  |  |  |
| --- | --- | --- |
| 25 | **45.** (1) A secured party may, by a security agreement or by | Vo l u n t a r y |
| a separate agreement entered into between the competing | subordination |

claimants, subordinate the secured party’s security right to any other interest and such subordination shall be effective according to its terms.

(2) A subordination shall be effective according to its 30 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.

|  |  |  |  |
| --- | --- | --- | --- |
| 5 | *Secured Transactions* | 35 | Alienation |
| **46.** The rights of a debtor in collateral may be transferred | |
| voluntarily or otherwise, notwithstanding any provision in | | of a debtor’s |
| rights in |
| the security agreement prohibiting transfer or declaring a | |
| collateral |
| transfer to be a default, but no such transfer shall prejudice | |
| the rights of the secured party under the security agreement | |
| 10 | or otherwise. | | Assignment |
| **47.** (1) Unless an account debtor has made an enforceable | |
| agreement not to assert defences or any claims arising out of | | of |
| intangibles |
| a contract between such account debtor and the assignor, an | |
| etc, and |
| account debtor may set up by way of a defence against the | |
| rights of |
| assignee- | | third party |

account

|  |  |  |
| --- | --- | --- |
| (a) | all defences available to the account debtor | debtors |

against the assignor arising out of the terms   
of the contract or a related contract,

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 15 | including | equitable | set-off | and |

misrepresentation; and

(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 20 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 25 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 30 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

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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 5 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 10 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-

|  |  |  |
| --- | --- | --- |
| 15 | (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”20 means a person who is obligated on an account or on chattel paper.

**PART VI**

**REGISTRATION**

|  |  |  |
| --- | --- | --- |
| 25 | **48.** (1) The powers, duties and functions pertaining to | Registration |
| the registration of security rights of movable property shall | of security |
| rights and the |
| be exercised, performed and discharged by the Authority. |
| establishment |

of the   
Register

*Secured Transactions*  37

(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”).

5 (3) The Register shall be maintained in such 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;

|  |  |  |
| --- | --- | --- |
| 10 | (b) | by the financing statement number; or |
| (c) | by any other additional criteria as may be |

prescribed.

|  |  |  |
| --- | --- | --- |
| 15 | **49.** (1) In order to perfect a security right by registration | Application |
| under this Act, a financing statement prepared in the | for |
| registration |
| prescribed form shall be required to be registered with the |
| of security |
| Registrar**.** | rights |

(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 20 statement.

(3) A financing statement-

(a) that is not in accordance with the form prescribed for the same and does not comply with the requirements imposed by 25 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

|  |  |  |
| --- | --- | --- |
| 30 | (c) | in which any mandatory fields required to |

be filled when registering electronically,   
have not been duly completed,

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may be rejected by the Registrar.

|  |  |  |  |
| --- | --- | --- | --- |
| 5 | **50**.(1) A financing statement- | | Financing |
| statement |
| (a) | may be filed before or after the security |
| agreement to which it relates is made, | |
| except where the collateral consists of | |

consumer goods;

(b) may relate to more than one security right   
 created or provided for in more than one   
 security agreement between the parties,

|  |  |  |  |
| --- | --- | --- | --- |
| 10 | (c) | except where the collateral consists of | |
| consumer goods; and | |
| shall include the following information:- | |
| (i) | the name of the debtor; |

(ii) the debtor’s unique identification

15 number;

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

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

20 (v) the duration of the filing**;**

(vi) the maximum amount of obligation   
 secured; and

(vii) such other information as may be   
 prescribed.

|  |  |  |
| --- | --- | --- |
| 25 | (2) A financing statement shall also disclose whether | When a  registration  becomes  effective |
| the secured party is a trustee.  **51**.(1) A financing statement that is filed shallbecome a registered financing statement, when a date, time, and a number (to be known as the “financing statement number”30 are assigned to it by the Registrar. | |

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

|  |  |  |
| --- | --- | --- |
| 5 | (a) | until it is discharged; or |
| (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.

|  |  |  |
| --- | --- | --- |
| 10 | **52.** (1) Upon the registration of a financing statement, the | Verification |
| Registrar shall deliver to the secured party named in the | statement |

financing statement or its authorized agent, a verification statement in the prescribed form, using a prescribed method of communication.

(2) A verification statement referred to in subsection 15 (1) shall include the following:-

(a) the information contained in the financing   
 statement;

|  |  |  |  |
| --- | --- | --- | --- |
| 20 | (b) | the financing statement number; and | Errors in the |
| (c) | the date and time of its registration. |
| **53.** (1) The registration of a financing statement shall | |
| become invalid if such statement contains an erroneous | | financing |
| statement |
| unique identification number which prevents the statement | |

from being discovered. However, the validity of a financing statement shall not otherwise be affected due to any defect

|  |  |
| --- | --- |
| 25 | found therein, unless a reasonable person is likely to be misled materially by such defect. |

(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

30 such financing statement.

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

|  |  |  |  |
| --- | --- | --- | --- |
| 5 | 40 | *Secured Transactions* | Amendment |
| **54.** (1) A registered financing statement may, at any time | |
| before it expires, be amended by the filing of an amendment | | of a |
| statement. | | registered |
| financing |
| (2) An amendment statement is registered when a date, | | statement |
| time and a number are assigned to it by the Registrar. | | Extension or |
| **55**.(1) The registration of a financing statement may at | |
| any time before it expires be extended or discharged by the | | descharge of |
| filing of an amendment statement. | | registration |

(2) A registration which is extended shall continue to

|  |  |  |
| --- | --- | --- |
| 10 | have effect until- | the date specified in the amendment |
| (a) |

statement; or

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

15 (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.

|  |  |  |
| --- | --- | --- |
| 20 | **56.** (1) An amendment statement that does not meet the | Rejection of |
| requirements imposed by this Act or any regulations made | an |
| amendment |
| thereunder relating to the same may be rejected by the |
| to a financing |
| Registrar**.** | statement |

(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

|  |  |  |
| --- | --- | --- |
| 25 | 49. | Notice of |
| **57.** (1) Where in relation to a security right the secured |
| party transfers an interest in the collateral, an amendment | transfer |

statement disclosing such transfer may be filed.

(2) The transferee of a security right or of receivables,   
30 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

*Secured Transactions*  41

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

|  |  |
| --- | --- |
| 5 | 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

|  |  |
| --- | --- |
| 10 | 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

|  |  |  |
| --- | --- | --- |
| 15 | disclosed as the secured party. | Notice of |
| **58.** (1) If a security right has been subordinated by the |
| secured party to the interest of another person, an amendment | subordination |

statement may be filed disclosing such subordination.

(2) An amendment statement referred to in subsection 20 (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 Searches

condition or exception and in such manner as may be prescribed, including any requirement pertaining to the 25 payment of a fee.

(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.

|  |  |  |
| --- | --- | --- |
| 30 | **60**.(1) Where a financing statement is registered and one | Debtor etc, |
| of the conditions set out in Column I of the Table set out | may require |
| below is satisfied, the debtor or any person with an interest | amendment |
| statement |
| in the property which falls within the description of the |

collateral in the financing statement, may give a notice in

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writing (hereinafter referred to as a “requirement notice”) to the secured party named in the financing statement or its authorized agent.

(2) The requirement notice shall-

|  |  |  |
| --- | --- | --- |
| 5 | (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 10 condition set out in Column I of the Table; and

(c) inform the secured party that the failure to   
 comply with the requirement notice may   
 result in the person who gives the notice,

|  |  |
| --- | --- |
| 15 | filing the appropriate amendment statement. |

**TABLE**

|  |  |  |
| --- | --- | --- |
| 20 | ***Column I*** | ***Column II*** |
| **Condition** | **Effect** |
| That the obligation under all | To discharge the registration. |

the security agreements to

|  |  |  |
| --- | --- | --- |
| which | the | financing |

statement relates has been

performed.

|  |  |  |
| --- | --- | --- |
| 25 | That the secured party has | To amend or discharge the |

agreed to release part or all of the collateral described in the financing statement.

registration so as to reflect   
the terms of the security   
agreement.

|  |  |  |  |
| --- | --- | --- | --- |
| 5  10 | *Secured Transactions* | | 43 |
| 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 | To amend the description of collateral to exclude items or kinds of property that are not collateral under the | |
| security agreement between | security agreement between | |
| the secured party and the | the secured party and the | |
| debtor. | debtor. | |
| That no security agreement exists between the persons named in the financing statement as the secured | To discharge the registra tion or where the debtor is not the sole debtor, to | |
| party and the debtor. | amend the registration. | |

(3) Where the person giving a requirement notice is   
15 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 20 working days after a requirement notice is issued, to-

(a) comply with such notice; or

(b) (i) commence proceedings in any court   
 having appropriate jurisdiction to   
 obtain an order to maintain the

|  |  |
| --- | --- |
| 25 | registration to which the requirement notice relates; |

(ii) notify the person who issued the notice;   
 and

(iii) file in the prescribed form with the 30 Registrar, information about the case number and date of commencement of the proceedings,

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

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

(6) The provisions of subsections (4) and (5) shall not apply to a trust case, and in such a case, a court having

|  |  |
| --- | --- |
| 10 | appropriate jurisdiction may, on application made in that 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

|  |  |  |
| --- | --- | --- |
| 15 | (b) | the secured party does not comply with |
| the 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 20 by it.

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

(8) For the purpose of this section, a “trust case”

|  |  |  |  |
| --- | --- | --- | --- |
| 25 | means a case in which the financing statement discloses that | | Entitlement |
| the secured party is a trustee. | |
| **61.** (1) Where any person without a reasonable cause- | |
| 30 | to damages |
| (a) | files a financing statement confirming the |
| for incorrect |
| existence of a security right under an | | filing |
| agreement**,** which in fact does not exist; or | |
| (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,

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

|  |  |
| --- | --- |
| 5 | (2) Where a secured party fails to forward a copy of the verification statement to the debtor within ten working days |

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 10 | foreseeable as likely to result from such failure**.** | | | Requirement |
| **62.** (1) A person who- | | |
| (a) | obtains an order for the appointment of a | | to notify the |
| Authority |
| 15 | receiver or a receiver and manager of a | | | about the |
| company’s property; or | | | appointment |
| of a receiver, |
| (b) | | appoints a receiver or a receiver and manager | & c., |
| of a company’s property under the powers | | |

contained in an instrument,

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

|  |  |
| --- | --- |
| 20 | (2) A receiver or a receiver and manager of a company’s property appointed by virtue of an instrument |

and who ceases to act as such, shall be required to file an amendment statement**.**

(3) A notice issued under this section shall be in the 25 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.

|  |  |  |
| --- | --- | --- |
| 30 | **63**.(1) The filing of a financing statement or an amendment | Filing of a |
| statement shall not constitute constructive notice or actual | financing |
| statement |
| knowledge of its existence or contents, to any person. |
| not to |

consitute a   
notice

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(2) A purchaser wh**o** in the ordinary course of busines**s p**urchases any collateral, shall not be required to inquire as to whether-

|  |  |  |
| --- | --- | --- |
| 5 | (a) | the collateral has been charged or pledged |
| (b) | or in the case of receivables, sold; or |
| the disposition constitutes a breach of the |

terms of the charge.

**PART VII**

**GENERAL PROVISIONS**

|  |  |  |
| --- | --- | --- |
| 10 | **64.** (1) Any legal or equitable principle governing the rights | Inconsistency |
| with the |
| and obligations arising under a security agreement shall, |
| provisions |
| except in so far as they are inconsistent with any provision of |
| of this Act |

this Act, continue to be applicable.

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

|  |  |  |
| --- | --- | --- |
| 20 | **65**.If a person fails without a reasonable cause to discharge | Action for |
| any obligation imposed on such person by this Act, the person | damages |
| 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.

|  |  |  |  |
| --- | --- | --- | --- |
| 25 | **66**.On an application made to a court having appropriate | | A court's |
| powr to |
| jurisdiction by a person having an interest in the collateral, | |
| determine |
| such court shall have the power to make one or both of the | |
| priorities |
| following orders:- | | and |
| entitlements |
| (a) | an order determining a question relating to | to collateral |

the priority or entitlement to the collateral;

|  |  |  |
| --- | --- | --- |
| 30 | (b) | an order extending or abridging, |
| conditionally or otherwise, the time periods |

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granted under this Act for the compliance   
with any requirements imposed by or under   
this Act.

|  |  |  |
| --- | --- | --- |
| 5 | **67**.The serving of any notices required to be carried out | Service of |
| under the provisions of this Act, shall be carried out in | notices |

accordance with the relevant provisions pertaining to the same contained in the Civil Procedure Code (Chapter 101).

|  |  |  |
| --- | --- | --- |
| 10 | **68.** (1) Except as otherwise specifically provided for in this | Conlicts with |
| Act, in the event of any conflict between the provisions of | the |
| this Act and any other law, the provisions of this Act shall | provisions of |
| any other law |
| prevail. |

(2) Notwithstanding the provisions of subsection (1), in the event of a conflict between the provisions ofthis Act and the provisions of any other law providing for the

|  |  |  |
| --- | --- | --- |
| 15 | protection of consumers, the provisions of such other law | Members, the |
| shall prevail. |
| **69**.The members of the Board and the Registrar and other |
| 20 | officers and employees of the Authority shall be deemed to | Registrar and |
| officers and |
| be public servants, within the meaning and for the purposes |
| employees, |
| of the Penal Code (Chapter 19). |
| deemed to be |

public   
servants

|  |  |  |
| --- | --- | --- |
| 25 | **70**.The Authority shall be deemed to be a Scheduled | Authority |
| Institution within the meaning and for the purposes of the | deemed to be |
| a Scheduled |
| Anti-Corruption Act, No. 9 of 2023 and the provisions of that |
| Institution |
| Act shall be construed accordingly**.** |
| **71**.(1) All expenses incurred by the Authority in any suit | Expenses to |
| or proceeding brought by or against it before any court, shall | be paid out of |
| the Fund of |
| be paid out of the Fund of the Authority and any cost paid to |
| the Authority |
| or recovered by the Authority in any such suit or proceeding, |

shall be credited to the Fund of the Authority**.**

30 (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

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purported to be done by such person under this Actor 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

|  |  |  |
| --- | --- | --- |
| 5 | are recovered by that person in such suit or proceeding. | Regulations |
| **72.** (1) The Minister may, from time to time, make regulations |

in respect of any matter which arerequired by this Act to be prescribed or in respect of which regulations are authorized to be made under this Act.

|  |  |
| --- | --- |
| 10 | (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, within   
15 three months after its publication in the *Gazette,* be brought before Parliament for approval.

(4) 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 duly done thereunder.

|  |  |
| --- | --- |
| 20 | (5) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded shall be |

published in the *Gazette.*

**73**. (1) The Authority may make rules in respect of matters Rules

for which rules are authorized or required to be made under 25 this Act or which it may consider necessary for the purpose of achieving its objectives.

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

|  |  |  |
| --- | --- | --- |
| 30 | (a) | the manner and mode of application for |

registration of security rights and of   
judgment creditors; and

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(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 Authority under subsection

|  |  |
| --- | --- |
| 5 | (1) shall be approved by the Minister and be published thereafter in the *Gazette.* |

**PART VIII**

**REPEALS AND SAVINGS**

|  |  |  |
| --- | --- | --- |
| 10 | **74.** (1) The Secured Transactions Act, No.49 of 2009 | Repeals and |
| (hereinafter referred to as the “repealed Act”) is hereby | savings |
| repealed. |

(2) Notwithstanding the repeal of the repealed Act-

(a) a security right that was registered under   
 the repealed Act and subsisting on the day

|  |  |
| --- | --- |
| 15 | immediately preceding the appointed date 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; and

|  |  |  |
| --- | --- | --- |
| 20 | (b) | an**y** civil or criminal proceeding instituted |
| under the repealed Actand pending on the |

day immediately preceding the appointed   
date in relation to an instrument creating-

(i) a pledge, mortgage or bill of sale of

25 any movable property; or

(ii) (A) an interest in a fixture of any   
immovable property; or

|  |  |  |
| --- | --- | --- |
| 30 | (B) | an assignment of a right to |
| payment under a mortgage, |
| charge or lease of any |

immovable property where the

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assignment does not convey or   
transfer the assignor’s interest   
in the immovable property,

which has been registered under this Act in terms of

|  |  |
| --- | --- |
| 5 | section 9 of the Registration of Documents (Amendment) Act, No. of 2023 shall be deemed to |

have been instituted under this Act.

**PART IX**

**INTERPRETATION**

|  |  |  |
| --- | --- | --- |
| 10 | **75**.(1) In this Act, unless the context otherwise requires - | Interpretation |

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

“account” means a monetary obligation not evidenced by a chattel paper, a security or 15 an instrument, whether or not the obligation has been earned by performance;

“acquisition security right” means -

|  |  |  |
| --- | --- | --- |
| 20 | (a) | a security right taken or reserved in a |
| collateral to secure payment of all or part |

of its price;

(b) a security right taken in a collateral by a person who gives value for the purpose of enabling the debtor to acquire rights 25 in the collateral, to the extent that the value is applied to acquire the rights; or

(c) the interest of a lessor of goods under   
 a lease for a term over one year,

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

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“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

|  |  |
| --- | --- |
| 5 | its agent, under section 54, 55, 57, 58 or 60 of this Act; |

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

10 18 of 1990;

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

(a) provides that the person entitled to the

|  |  |
| --- | --- |
| 15 | 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

20 a security right, in or in a lease of, specific goods;

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

“commercially reasonable”means the adoption of a 25 procedure in the disposition of a collateral under such conditions as maybe considered reasonable according to the prevailing circumstances, calculated to obtain the best market price for the same

30 considering the prevailing circumstances;

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

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“debtor” means -

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

|  |  |  |
| --- | --- | --- |
| 5 | (b) | the collateral; |
| a purchaser under a hirepurchase |

agreement or a lessee under a lease for a   
term over one year;

|  |  |  |
| --- | --- | --- |
| 10 | (c) | a purchaser who acquires goods subject |
| (d) | to a retention of title clause or under a |
| conditional sale; and |
| 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;

15 “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 20 of the security agreement, the security right becomes enforceable;

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

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

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

|  |  |  |
| --- | --- | --- |
| 30 | (b) | is in the ordinary course of business, |

treated as establishing that the person in   
possession of it is entitled to receive, hold

*Secured Transactions*  53

and dispose of the document and the   
goods it covers;

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

|  |  |
| --- | --- |
| 5 | “financing statement” means a statement containing the information required under paragraph |

(c) of subsection (1) of section 50, and, where the context so permits, includes an amendment statement and a document 10 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**;**

15 “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;

“future advance**”** means the advance of any money,

|  |  |
| --- | --- |
| 20 | credit or other value secured by a security agreement, whether or not such advance |

is made pursuant to a commitment;

“goods”means movable property other than chattel paper, documents of title, instruments, 25 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;

30 “instrument” means -

(a) a bill of exchange, a promissory note   
 or a cheque within the meaning of the   
 Bills of Exchange Ordinance (Chapter   
 82);

|  |  |  |
| --- | --- | --- |
| 35 | (b) | a letter of credit or an advance of credit, |
| if the letter or advance states that it |

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must be surrendered upon claiming   
payment thereunder; and

|  |  |  |
| --- | --- | --- |
| 5 | (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,

but does not include a writing that constitutes a   
part of chattel paper, document of title, instrument,

10 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;

15 “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;

|  |  |  |
| --- | --- | --- |
| 20 | (b) | to be furnished or that have been |
| (c) | furnished under a contract or service; |
| raw materials or work in progress; or |
| (d) | material used or consumed in any |

business or profession;

“lease for a term over one year” includes a series of

|  |  |
| --- | --- |
| 25 | short term leases of the same asset that in aggregate exceeds one year, but does not |

include-

|  |  |  |
| --- | --- | --- |
| 30 | (a) | a lease of goods by a lessor who is |
| (b) | not regularly engaged in the business |
| of leasing goods; |
| a lease of household furnishing or |

appliances as part of a lease of

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immovable property where the goods   
are incidental to the use and   
enjoyment of the immovable   
property; or

|  |  |  |
| --- | --- | --- |
| 5 | (c) | a lease of goods of a prescribed kind, |
| regardless of the length of the term |

of lease;

“minerals”includes oil, gas and hydrocarbons;

“Minister” means the Minister to whom the

|  |  |
| --- | --- |
| 10 | implementation of the provisions of this Act is assigned; |

“movable property” means-

(a) goods, a document of title, chattel   
 paper, security, instrument, money or

|  |  |  |  |
| --- | --- | --- | --- |
| 15 | (b) | any intangible property; or | |
| (i) | an interest in a fixture of any |

immovable property; or

(ii) an assignment of a right to   
payment under a mortgage,

|  |  |
| --- | --- |
| 20 | charge or lease of any immovable property, where the assignment |

does not convey or transfer the   
assignor’s interest in the   
immovable property;

25 “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;

|  |  |
| --- | --- |
| 30 | “notice of judgment” and “notice of claim” means the data in any prescribed form required to |

be registered with the Authority to effect a   
registration under this Act, and where the   
context so admits, includes the data

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authorized in order to give effect to an   
amendment, renewal or discharge of such   
registration;

“obligation secured”, for the purpose of determining

|  |  |
| --- | --- |
| 5 | the amount payable under a lease that secures payment or performance of an |

obligation, means -

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

|  |  |  |
| --- | --- | --- |
| 10 | (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 ownership of the   
collateral, less the amounts paid;

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

“pledgor” means a person who delivers goods in   
 pledge or for pawn to a pawnbroker;

20 “prescribed” means prescribed by regulations made under this Act;

“proceeds” means identifiable or traceable movable   
property in any form derived directly or   
indirectly from any dealing with the

|  |  |  |
| --- | --- | --- |
| 25 | collateral or the proceeds therefrom, and includes- | |
| (a) | any payment representing an |

indemnity or compensation for loss   
or damage caused to the collateral,

|  |  |  |
| --- | --- | --- |
| 30 | (b) | including a right to an insurance |
| payment or proceeds therefrom; and |
| any payment made in total or partial |

discharge or redemption of chattel

|  |  |
| --- | --- |
| 35 | paper, an instrument or any intangible; |

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

5 “receiver” includes a receiver and manager;

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

“secured party” means -

|  |  |  |
| --- | --- | --- |
| 10 | (a) | a person who holds a security right |

for the person’s own benefit;

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

|  |  |  |
| --- | --- | --- |
| 15 | (c) | a trustee, if a security right is |
| (d) | embodied in a trust indenture; and |
| where the context so admits, includes |

a receiver;

“security agreement” means an agreement that creates or provides for a security right and 20 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, 25 whether or not the interest secures payment or performance of an obligation, the interest of-

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

|  |  |  |
| --- | --- | --- |
| 30 | (b) | a transferee of an account or chattel |

paper;

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“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

|  |  |
| --- | --- |
| 5 | 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

10 provided for; and

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

15 other than an antecedent debt or liability.

(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.

|  |  |
| --- | --- |
| 20 | (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.

**76.** In the event of any inconsistency between the Sinhala

|  |  |  |
| --- | --- | --- |
| 25 | and Tamil texts of this Act, the Sinhala text shall prevail. | Sinhala text |
| to prevail in |

case of   
inconsistency

DEPARTMENT OF GOVERNMENT PRINTING