



PUBLIC CONSULTATION PAPER
Proposed Legislation to Modernize the Secured Credit Transactions
System in The Bahamas

1 July, 2022

TABLE OF CONTENTS

I. Introduction

II. Background

- 1. Existing Issues Regarding Collateral and the Impact of COVID-19**
- 2. Role of Modern Secured Transactions Systems**

III. Analysis of The Bahamas' Legal Framework and Key Findings

IV. Proposals for Reform

V. Key Provisions of a Proposed Secured Transactions Law

VI. Consultation Period

Annex: Movable Property Security Interest Bill, 2022

GLOSSARY OF ABBREVIATIONS

GoB	The Government of The Bahamas
Model Law	UNCITRAL Model Law on Secured Transactions
OECD	Organisation for Economic Co-operation and Development
SMEs	Small and Medium-sized Enterprises
UNCITRAL	United Nations Commission on International Trade Law
WBG	World Bank Group

I. INTRODUCTION

This Consultation Paper summarizes the key findings of an in-depth analysis of The Bahamas' legal framework for taking security in movable property. The Paper also highlights some of the key reforms required in a legal framework that is conducive to a modern secured transactions system that enables the use of movable property as collateral, and highlights key provisions of the Movable Property Security Interest Bill concerning such reforms. The draft Bill, which is set out in the Annex, was prepared following a consultancy to guide the establishment of a moveable collateral registry for The Bahamas.

II. BACKGROUND

Access to finance is critical for private sector development and economic growth. Nonetheless, it remains one of the main challenges for business growth, particularly for the small, and medium-sized enterprises (“SMEs”), half of which do not have access to finance worldwide. In the Caribbean, SMEs play a crucial role in economic growth, yet struggle to access finance due to lack of collateral, poor credit infrastructure, legal systems that favor larger businesses and those with immovable property available.

These issues are also present in The Bahamas, where access to finance has been identified as one of the most pressing constraints, according to different studies and surveys conducted. As a result, during the 2013 National Caribbean Growth Forum, the country recognized that access to finance should be the top priority for national reform.¹

1. Existing Issues Regarding Collateral and the Impact of COVID-19

In The Bahamas, private sector credit has been on the decline during the past decade, and collateral requirements remain high, hampering access to credit and collateral. According to the 2010 World Bank Enterprise Survey, collateral requirements were estimated at 231% of the loan value, which was higher compared to its LAC and high-income (non-OECD) peers.

In addition, there is a serious mismatch between the assets that lending institutions will accept as collateral, and the assets held by SMEs. In The Bahamas, the preferred form of collateral is immovable property (real estate and land) and the movable property accepted by most commercial banks and credit unions is extremely limited, but SMEs typically do not own immovables. In developing countries, most assets held by SMEs are movable property, which include vehicles, machinery, equipment, and accounts receivables, with an average holding of a mere 22% in land.² This means that SMEs are often either denied credit outright or cannot afford to borrow due to the high lending rates. Often, the legal framework fails to facilitate the use of movable property as collateral.³

Moreover, the economic crisis caused by the COVID-19 pandemic, is likely to increase market risk, liquidity risk, and credit risk, resulting in a lending decrease, particularly to SMEs, a

¹ Sylvia Dohnert et al, *Toward a Business Climate Reform Agenda in the Caribbean*, INTER-AMERICAN DEVELOPMENT BANK, Discussion Paper No IDB-DP-479, 21-22 (Aug. 2016).

² WBG, *Secured Transactions, Collateral Registries and Movable Asset-Based Financing, Knowledge Guide*, 2019.

³ *Id.*

sector likely to be more harshly hit by the pandemic. According to a survey conducted by the International Finance Corporation to assess the early impacts of the pandemic on financial institutions, by the end of 2020 retail, micro and SME lending had been deprioritized by 27% and 18% of financial institutions, respectively.⁴

2. Role of Modern Secured Transactions Systems

Secured transactions reform is one of the interventions proven effective to improve access to finance across sectors, but mainly for SMEs. A 2013 study comparing access to finance pre and post introduction of secured transactions systems showed that access to loans increased by 7% in countries that introduced collateral registries. These countries also saw a reduction of 3% on interest rates paid on loans, and an increase in the maturity of bank loans of six months.⁵ Likewise, countries that have modernized their secured transactions systems have achieved a higher degree of development of their credit systems by making the use of movable collateral more effective.⁶

III. ANALYSIS OF THE BAHAMAS' LEGAL FRAMEWORK AND KEY FINDINGS

As a part of ongoing efforts to modernize the secured transactions system in The Bahamas, in December 2020 the Central Bank invited proposals from qualified consulting firms to perform a diagnostic study in accordance with international best practices, to identify existing gaps in the legal and regulatory system, from which specific reform proposals would be provided to support a fully operational collateral registry; and provide recommendations for the development of a modernized collateral registry framework.

The study identified areas in The Bahamas that hinder finance secured with movable property and highlighted opportunities for reform that could enhance the legal and operational frameworks in The Bahamas to provide for increased legal certainty and transparency and enable the use of movable property as collateral.

A comparative analysis of the existing legal framework in The Bahamas for credit secured with movable property against “international best practices” highlighted by the United Nations Commission on International Trade Law (“UNCITRAL”) was undertaken. There is international consensus on the principles required in a legal framework that is conducive to a dynamic and modern lending market, where the movable property of businesses and entrepreneurs can be effectively used to access finance. International best practice principles are organized in five areas of secured transactions: scope, creation, publicity, priority, and enforcement of security interests.

⁴ World Bank Blogs, *Financial institutions are showing resilience and will be central to the recovery*, <https://blogs.worldbank.org/psd/financial-institutions-are-showing-resilience-and-will-be-central-recovery?deliveryName=DM104516>

⁵ Inessa Love, et. al., *Collateral Registries for Movable Assets: Does Their Introduction Spur Firms' Access to Bank Finance?*, Policy Research Working Paper 6477, WBG, 2013.

⁶ WBG, *Secured Transactions, Collateral Registries and Movable Asset-Based Financing, Knowledge Guide*, 2019.

- **Comprehensive Scope:** Under best practices, a single law incorporates all the rules for creation, publicity, registration, priority, and enforcement of security interest. The law should broadly define the types of parties, permissible collateral, forms of debt and types of security interests, and to the extent possible, treats them the same.
- **Simple Creation:** The legal requirements for creating a right in movable property should be flexible and cost efficient, without imposing formalities to create a valid security interest among a secured creditor and a debtor.
- **Effective Publicity:** In modern secured transactions frameworks, a distinction is drawn between validity among the parties and effectiveness against third parties. Best practice dictates that security interests should be publicized to inform third parties of the potential existence of a security interest. An effective method of publicity eliminates the risk associated with the existence of “secret liens” in movable property. Publicity also serves to establish a specific date for determining priority claims. The preferred method of publicity is registration in an electronic collateral registry. Possession and control should also be recognized by the legal framework as methods of publicity.
- **Clear Priority Rules:** The rules that determine the sequence in which competing claims in movable property collateral rank should be clear and precise. In modern secured transactions systems creditors can determine with a high degree of predictability their position vis-à-vis competing claimants and the risk of lending against movable property. Pursuant to the “first in time” rule, the creditor who registered a notice of a security interest should usually enjoy priority over a creditor who publicized later in time. However, best practices provide for exceptions to the general rule in order to facilitate the operation of commercial transactions and protect the rights of third parties (buyers in the ordinary course of business, acquisition finance, agricultural financing).
- **Enforcement:** The process for enforcing a creditor’s right in the event of default should be efficient, quick, and cheap. Enforcement is most effective when the parties can agree on rights and remedies before default. Extra-judicial enforcement and expedited court processes should be available to facilitate the foreclosure process and preserve the value of the movable property collateral. Alternative dispute resolution should be permitted and supported.

The in-depth analysis of The Bahamas’ legal framework for taking security interests in movable property presented in the consultants’ Diagnostic Report and Recommendations on the Legal and Operational Framework, identified a number of weaknesses, which are summarized below.

1. There is no single law governing all aspects of secured transactions under which a creditor may secure an obligation with the movable property of any individual or of a business (whether incorporated or informal business). Rather the legal framework is fragmented and spread across a variety of laws that govern different aspects of secured

transactions and different types of security devices, depending on the types of collateral and the types of debtors. Most of these statutes are old and fail to address the needs of modern markets. Despite this multiplicity of laws, several security interests remain unregulated by statute. Excessive reliance on the common law increases uncertainty and legal risk, as basic issues arising from the execution of such, security devices need to be determined according to the principles derived from English common law.

2. The existing legal framework is incomplete and fails to address all the principles highlighted by best practices, including important rules for the operation of modern lending products, such as receivables financing and acquisition finance. Currently, the rules required to structure effective receivables' financing do not exist under The Bahamas' legal framework, limiting the capacity of SMEs to access immediate finance using their accounts receivable as collateral. As such, creditors rely on high collateral requirements, mainly immovable property, and lack the incentive to create new lending products secured with movable property.
3. Likewise, the existing laws are limited in scope and give advantages to certain creditors over others. The different laws apply to certain types of debtors, creditors or certain types of collateral. As a result, unincorporated businesses and those incorporated under other laws, mainly SMEs, are excluded from the flexibility provided to companies incorporated under the Companies Act or the International Business Companies ("IBC") Act to encumber all of the debtor's movable property, present and future, as collateral. Further, the flexibility provided by the Companies Act and the IBC Act to create security interests is hindered by other Acts. For example, even though companies may enter transactions electronically, secured transactions are expressly excluded because they are usually recorded in the Deeds and Documents section of the Registrar General's Department ("the Registry") which does not have the capability to process electronic data.
4. The legal rules that provide for publicity and registration do not meet international best practices. The system for registering documents at the Registry is obsolete, expensive and does not provide the transparency required to eliminate secret liens. Similarly, the rules governing priorities fail to address business transactions involving movable property. The current framework recognizes the general rule of "first in time to register" but does not address important exceptions that serve to promote credit to sectors and the funding of specific types of assets (acquisition finance, buyers in the ordinary course of business, agricultural financing, etc.).
5. In The Bahamas, extra-judicial enforcement mechanisms are available, and the parties may contractually agree on these remedies. Nonetheless, creditors report that the majority of enforcement procedures have to be conducted through the judicial system and that enforcement requires urgent improvement. Further, certain laws impose limitations on the ability of creditors to enforce security interests.
6. A review of the laws that govern electronic transactions in The Bahamas indicates that the existing framework is generally adequate to enable the implementation of an electronic Collateral Registry. There are, however, certain shortcomings derived from the need to register secured transactions in the Registry, such as the impediment to execute secured transactions electronically. This issue would be addressed under the new framework for secured transactions as recommended below.

IV. PROPOSALS FOR REFORM

The diagnostic study evidenced that the legal framework in The Bahamas requires modernization. In order to transition from an obsolete and costly secured transactions system, to a modern framework conducive to a vibrant secured lending market, it was recommended that The Bahamas undertake a comprehensive reform consisting of several components including the following:

- Adoption of a new secured transactions law based on international best practices, guided by the UNCITRAL Model Law on Secured Transactions, but considering the market needs, practices and institutions of The Bahamas.
- The new law on secured transactions should govern all types of security interests created in movable property (and excluding immovable property) by all categories of creditors and debtors, providing clear rules for the creation, publicity, priority and enforcement of security interests.
- The Collateral Registry should be an electronic notice-based registry designed and developed according to the best practice principles. The fees for registry services should be kept low and be based on a flat fee.

The reform and modernization of the secured transactions legislation and system, based on international best practices and tailored to The Bahamas' market needs would improve the existing credit infrastructure conducive to developing the market, and ultimately increase access to finance with improved conditions for SMEs mainly. This is particularly relevant in a post-COVID environment whereby policies that foster an inclusive recovery and support the vulnerable groups, such as SMEs, are crucial. This reform will support the financial sector, which could play a critical role in the economic recovery through effective financial intermediation, but that requires adequate conditions to extend credit, mainly for SMEs. Comprehensive reform would also improve The Bahamas' position in the Doing Business Report. In 2021, The Bahamas ranked 152 out of 190 economies measured and scores "6" out of 12 points in the Strength of Legal Rights Index.

V. KEY PROVISIONS OF A PROPOSED SECURED TRANSACTIONS LAW

Establishing a legal and regulatory environment where movable assets can be used effectively as collateral and, at the same time provide effective credit protection, is a critical step towards responsible and inclusive access to finance. Even in developed economies where reliable credit information and a wide range of financial products are available, only the largest and most creditworthy businesses can obtain unsecured loans. The rest are expected to offer collateral. A sound legal and regulatory infrastructure is critical to maximize the economic potential of movable assets so that they can be used as collateral.⁷ A sound legal framework is required so that lenders can deploy and engage in new lending products that rely on movable collateral, both tangible and intangible.

⁷ WBG, *Secured Transactions, Collateral Registries and Movable Asset-Based Financing, Knowledge Guide*, 2019.

The draft Movable Property Security Interests Bill will govern the manner in which credit is secured with movable property in The Bahamas, by providing creditors with the possibility of taking an interest in the debtors' movable property. The draft Bill incorporates the principles and practices of modern frameworks that enable taking all types of movable property as collateral for credit, including tangible assets such as inventory, equipment, livestock and crops, and intangibles such as accounts receivable and intellectual property. When enacted, the draft Bill will establish the Collateral Registry which would be the only place for registration for security interests, replacing current registration at the Registry.

The draft Bill is based on the United Nations Commission on International Trade Law ("UNCITRAL") *Model Law on Secured Transactions* ("Model Law"), which has also been the guide for many jurisdictions around the world seeking to modernize the legal framework and improve the conditions for accessing credit secured with movable property. Nevertheless, this draft Bill deviates from some terminology used by the Model Law with respect to concepts that already exist in The Bahamas, for example the Model Law concepts of "security right" and "effectiveness against third-parties" are the equivalent of "security interest" and "perfection" respectively in The Bahamas. The draft Bill also takes into account the approaches taken by other countries that have implemented modern secured transactions legal reform, such as Jamaica.

The draft Bill provides an integrated structure for movable secured lending which is applicable to all types of parties: debtors (individuals, small and medium size businesses ("SMEs"), incorporated or not, and large companies), and creditors (commercial banks, non-bank financial institutions, suppliers that sell assets on credit, etc.). Likewise, the draft Bill applies to all movable property security instruments, including fixed and floating charges, chattel mortgages, hypothecations, assignment of receivables, credit-sale and hire-purchase agreements, and sales with retention of title.

The draft Bill builds on positive existing practices and policies for movable collateral in The Bahamas and introduces innovative concepts of modern legal frameworks with respect to the different aspects of security interests: creation, perfection, priority, enforcement, and a modern registration system. A centralized electronic register, which contains all records of security interests in movable property and is accessible online and in real-time, will provide for a streamlined efficiency for creditors searching information on the collateral of a debtor and enable the discoverability of all security interests from the moment they are registered. The Collateral Registry would be the official source of information for all security interests in movable property in The Bahamas.

The enactment of the draft Bill together with the establishment of a modern Collateral Registry system, would provide creditors in The Bahamas with comprehensive guidance for taking movable property as collateral and enable all types of debtors to use the wide variety of assets available as security in exchange for credit. The new framework, thus, will promote access to finance for a broader spectrum of debtors, especially SMEs, to improve the credit infrastructure, and facilitate the development of modern lending products and investment in the country. The key provisions of the draft Bill are summarized below.

Part I

Part I of the draft Bill provides for its' broad scope of application to all transactions that secure an obligation with movable property. As such, and subject to certain exceptions, the draft Bill,

when enacted would apply to a transaction that creates a security interest, a lease of goods for a term of more than one year, and an assignment of receivables. This Part also provides for the interpretation clause, introducing definitions of key terms used in the draft Bill.

Part II

This part provides for the establishment of a modern Collateral Registry system and the appointment of a Registrar in charge of running the Collateral Registry. The Collateral Registry system would operate using a web-based electronic database and most functions would be performed automatically, therefore the Registrar would be tasked with maintaining and ensuring the adequate operations of the Collateral Registry, with minimum intervention. Secured creditors, and their agents, will have access through the Registry's website 24/7 to search the database and register notices of security interests in real-time. This will allow persons conducting searches to find the information on security interests in real-time, eliminating invisibility periods and increasing transparency.

Part III

Part III provides that a security agreement is effective according to its terms and establishes the minimum requirements that an agreement must contain. The security agreement is the controlling element in the contractual relationship between the secured creditor and the debtor. While a security interest in movable property may be created or provided for by agreement between the parties, it needs to be perfected to be effective against third parties.

Part IV

Two components are necessary to render a security agreement effective against third parties: the creation of a valid security interest and its publication, either by possession, registration, or control. The term "perfection" is equivalent to "effectiveness against third parties," and the latter is the term provided by the Model Law. Perfection means that the security agreement is binding against third parties. Achieving perfected status would mean that a secured creditor has obtained the greatest bundle of rights with respect to competing claims in the same collateral. This Part contains provisions dealing with specific types of security interests and provisions that apply to security interests in movable property in specific circumstances. Some of these provisions confirm that a security agreement may provide for after-acquired property and proceeds, and that perfection of the security interest in these categories is automatic. "Control" is a new method for perfection proposed in this draft Bill, which is applicable when the collateral comprises funds credited to a deposit account.

Part V

The statutory priority rules in Part V determine the rights among competing claimants. Subject to certain exceptions, the general priority rule is based on time and date of registration. Because of the streamlined efficiency that the Collateral Registry will provide, priority can be easily proven. The priority rules in this Part also contemplate rules essential for real-life situations and business transactions in which movable property is used as collateral, such as the commingling or transformation of secured assets as they move through a value chain. This Part also contemplates subordination agreements, in which a prior creditor agrees to subordinate its interest to a subsequent creditor, such as might occur on a merger of companies. Likewise, this Part covers common transactions in the commercial market where the interests of third parties

may conflict with the interest of a secured creditor and, thus, certain exceptions are required. Principally, the exception under which the buyer in the ordinary course of business takes unencumbered possession of a security interest is fundamental for the daily operation of commerce.

Part VI

This Part contemplates that an initial notice of a security interests would be registered in a single, centralized electronic Collateral Registry. Search capacity would be available to the public in general and registrations would be made by the secured creditors and persons authorized by them. Access to the Registry would be online and 24/7. Instead of lodging the security agreement itself, creditors would simply enter a notice of the security interest in the registry system database. Another innovation of the draft Bill is that registration of an initial notice could take place prior to execution of the security agreement, avoiding delays in the lending process and permitting the establishment of priority with greater certainty.

Part VII

This Part deals with rights and remedies upon a debtor's default. In accordance with the concept of party autonomy, the parties may define their own rights and obligations concerning events of default and establish remedies according to their own needs, including out-of-court remedies for the repossession and disposal of tangible assets. This Part recognizes the validity of any such remedies that may be agreed upon by the parties or provided by statute. This Part also provides for enforcement remedies that ensure that enforcement is conducted in adherence to the following objectives:

- (a) to dispose of the collateral as soon as possible after seizure;
- (b) to obtain the best value possible, under the prevailing circumstances;
- (c) to balance the rights of secured creditors and debtors by providing sufficient protections to debtors in the enforcement process, including: the right of redemption, the right to receive notices, the right to reinstate the security agreement, and the right to surplus;
- (d) a creditor's right to monitor the disposal of the asset by the seizing creditor; and
- (e) a fair and efficient distribution of proceeds obtained from the disposal of the asset.

Part VIII

This Part deals with general matters, including damages that may be awarded to a person for any loss or damage caused by another person due to his failure to discharge any duty or obligation imposed. This Part also provides the debtor with the right to request the secured creditor to provide certain information relating to a security interests. It addresses service of documents and empowers the Minister to make regulations for the purpose of giving effect to or carrying out the provisions of the Act.

Part IX

The enactment of the draft Bill will impact other legislation in The Bahamas. Although the draft Bill does not abolish the existing security devices, it does provide a new modern and comprehensive method for registration, priorities and remedies upon default based on the substance of a transaction. This Part provides for the transition rules for security interests

created prior to the enactment of the draft Bill. Upon enactment of the draft Bill, a prior security interest that was enforceable against third parties under the prior law would continue, during the transitional period, to be enforceable against third parties. During the transitional period, prior security interests should be perfected. The transitional period must be set considering an adequate time frame for the perfection of prior security interests under the new framework in the Collateral Registry. The consequence of not perfecting a security interest within the transitional period is that the security would be deemed to be an imperfect security interest, thus, unenforceable against third parties. In setting the transitional period, the time for design and implementation of the Collateral Registry must be considered, normally six months to one year.

VI. CONSULTATION PERIOD

The Central Bank invites your comments on the draft Movable Property Security Interests Bill, which should be submitted no later than 31 August, 2022. Your comments and questions regarding the proposed legislation should be directed via email to:

The Policy Unit
Bank Supervision Department
Central Bank of The Bahamas

Email: Policy@centralbankbahamas.com

ANNEX

**CENTRAL BANK OF THE BAHAMAS MOVABLE PROPERTY SECURITY
INTERESTS BILL 2022**

ARRANGEMENT OF SECTIONS

**PART I
PRELIMINARY**

1. Short title and commencement.
2. Interpretation.
3. Application of Act.
4. General standard of conduct.

**PART II
APPOINTMENT OF COLLATERAL REGISTRY OFFICE**

5. Collateral Registry.
6. Registrar and other officers.

**PART III
SECURITY INTERESTS**

7. Creation of security interest and effectiveness of security agreement.
8. Obligations that may be secured.
9. Assets that may be encumbered.
10. Description of collateral in security agreement.
11. Security interests in after-acquired property.
12. Security interests in proceeds.
13. Tangible assets commingled in mass or made into product.
14. Security interest in accounts receivable.
15. Personal or property right securing payment or other performance.
16. Tangible assets covered by negotiable instruments.
17. Tangible assets and intellectual property.
18. Extinguishment of security interests.

**PART IV
PERFECTION OF SECURITY INTERESTS**

19. Methods for perfection of a security interest.
20. Perfection of security interest in proceeds.
21. Perfection of security interests in mass or product.
22. Perfection of security interests in consumer goods.
23. Negotiable instruments and tangible assets.
24. Money and deposit accounts.
25. Security interests in farm products.
26. Change in method of perfection.
27. Lapses in perfection.

**PART V
PRIORITY BETWEEN SECURITY INTERESTS**

28. Priority of security interests in same collateral.
29. Transfer of security interests.
30. Subordination.
31. Priority of a security interest in proceeds.
32. Priority of security interest transferred by debtor.
33. Transfer of debtor's interest in collateral with prior consent of secured creditor.
34. Competing security interest in mass or product.
35. Security interest in accessions.
36. Priority of security interests in accessions.
37. Priority of purchase money security interest in fixtures,
38. Buyers and other transferees, lessees, and licensees of collateral.
39. Security interests competing with judgment creditors.
40. Priority of statutory liens.
41. Priority of purchase money security interests.
42. Competing purchase money security interest.
42. Competing purchase money security interest in mass or product.
43. Future advances and future collateral.
44. Knowledge of security interest irrelevant.
45. Negotiable instruments and documents of title.
46. Funds credited to a deposit account.
47. Money.
48. Payment system.
49. Unlisted securities.
50. Protection of the account debtor.
51. Notification of a security interest in a receivable.
52. Payment by the account debtor.

PART VI REGISTRATION OF SECURITY INTERESTS

53. Collateral registry of movable property security interest.
54. Registration of an initial notice.
55. Description of collateral.
56. Consent to register initial notice or amendment notice.
57. Date and time of effectiveness of the registration of a notice.
58. Validity of registration and errors in required information by registrant.
59. Period of validity of initial notice.
60. Renewal of registration.
61. Registration of transfer of perfected security interests.
62. Registration of subordinated security interests.
63. Amendment or discharge of registration.
64. Discharge of registration relating to consumer goods.
65. Debtor may demand registration of amendment notice.
66. Court order to amend or discharge.
67. Search in register.
68. Offences on registration and search.
69. Search certificate as evidence.

PART VII ENFORCEMENT OF SECURITY INTERESTS

70. Post-default rights.
71. General principle of enforceability.
72. Right of higher-ranking secured creditor to take over enforcement.
73. Secured creditor may render collateral unusable.

74. Secured creditor may apply certain collateral in satisfaction of secured obligation.
75. Collection of payment by an outright transferee of a receivable.
76. Collateral at risk.
77. Repair and preparation of collateral.
78. Duty of secured creditor selling collateral.
79. Power of sale applies to document of title and related goods.
80. Method of sale of collateral.
81. Notice of sale of the collateral.
82. Buyer of collateral takes free of security interests.
83. Secured creditor to give statement of account to debtor.
84. Secured creditor selling collateral to pay prior ranking secured parties.
85. Distribution of surplus.
86. Surplus may be paid into Court.
87. Proposal of secured creditor to retain collateral.
88. Persons entitled to notice may object to proposal.
89. Person making objection may be requested by the secured creditor to prove interest.
90. Position where persons entitled to notice do not object to retention of collateral by secured creditor.
91. Secured creditor shall not damage goods when removing accession.
92. Entitled persons may redeem collateral.
93. Debtor may reinstate the security agreement.
94. Limit on reinstatement of security agreement.
95. Right of secured creditor to inspect land.
96. Penalty for disposal of crops contrary to contract.

PART VIII GENERAL

97. Damages.
98. Secured creditor to provide certain information relating to security interests.
99. Obligations of parties in possession.
100. Service of documents.
101. Regulations.

PART IX REPEAL AND TRANSITIONAL PROVISIONS

102. Overriding effect.
103. Interpretation of transitional provisions.
104. Prior security interests continue to be enforceable against third parties.
105. Prior proceedings.
106. Priority of third party interests during transitional period.

MOVABLE PROPERTY SECURITY INTERESTS BILL, 2022

**A BILL FOR AN ACT TO MODERNISE THE LAW GOVERNING MOVEABLE
PROPERTY SECURITY INTERESTS**

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the Movable Property Security Interests Act 20 [].
- (2) This Act shall come into force on such date as the Minister may appoint by Notice published in the Gazette.

2. Interpretation

- (1) In this Act –

"accession" means goods that are installed in, or affixed to, other goods without losing their identity;

"account debtor" means a person who is obligated under an account receivable or chattel paper;

“advance” means –

- (a) the payment of money, the provision of credit or the giving of value; and
- (b) includes any liability of the debtor to pay interest, credit costs and other charges or costs payable by the debtor in connection with an advance or the enforcement of a security interest securing the advance;

"after-acquired property" - means movable property which, at the time the security agreement is concluded, does not exist or the debtor does not have rights in or the power to encumber;

"amendment notice" means a notice registered in the Collateral Registry in such form as may be prescribed to renew or otherwise amend a registration of an initial notice;

"cancellation notice" means a notice registered in the Collateral Registry in such form as may be prescribed to cancel the effectiveness of the registration of the initial notice and all related registered notices;

"cash proceeds" means proceeds in the form of money, cheques, drafts or deposit accounts in banks or similar institutions;

"chattel paper" means one or more writings that evidence both a monetary obligation and a security interest in, or lease of, specific goods or specific goods and accessions;

"collateral" means movable property that is subject to a security interest, including an account receivable which is the subject of an outright transfer by agreement;

"Collateral Registry" means the Registry established by section 5;

"commercial consignment" means a consignment where –

- (a) a consignor has reserved an interest in goods that the consignor has delivered to the consignee for the purpose of sale, lease or other disposition; and
- (b) both the consignor and the consignee deal in the ordinary course of business in goods of that description, but does not include an agreement under which goods are delivered to an auctioneer for the purpose of sale;

“competing claimant” means a creditor of a debtor or other person with rights in an encumbered asset that may be in competition with the rights of a secured creditor in the same encumbered asset and includes:

- (i) another secured creditor of the debtor that has a security interest in the same encumbered asset;
- (ii) another creditor of the debtor that has a right in the same encumbered asset;
- (iii) the insolvency representative in insolvency proceedings in respect of the debtor; and
- (iv) a buyer or other transferee, lessee or licensee of the encumbered asset;

"consumer goods" means goods that are used or acquired for use primarily for personal, domestic or household purposes;

"control" in relation to deposit and securities accounts exists –

- (a) automatically on the creation of a security interest if a bank or other financial institution that maintains the deposit or securities account is the secured creditor; or
- (b) if the bank or other financial institution has concluded a control agreement in writing with a debtor and a secured creditor;

“control agreement” means an agreement in writing between a deposit-taking institution, a debtor, and a secured creditor, according to which the deposit-taking institution agrees to follow instructions from the secured creditor with respect to the payment of funds credited to the bank account of the debtor without further consent from the debtor;

"crops" means crops and plants, whether grown, growing or yet to be planted, attached to land by roots or forming part of the land but does not include trees, unless the trees are grown for commercial purposes and sale;

"debtor" –

- (a) means a person who has an interest in collateral, and includes –
 - (i) a person who owes payment or performance of an obligation secured by collateral, whether or not that person owns or has other rights in the collateral;
 - (ii) a person who receives goods from another person under a commercial consignment;
 - (iii) a lessee under a lease for a term of more than one year;

- (iv) a transferor of an account receivable or chattel paper;
- (v) a transferee of or successor to the interest of a person referred to in subparagraphs (i) to (iv); or
- (vi) if the person referred to in subparagraph (i) and the person who owns or has other rights in the collateral are not the same person, includes –
 - (A) the person who owns or has other rights in the collateral, where the term “debtor” is used in a provision of this Act dealing with the collateral;
 - (B) the obligor, where the term “debtor” is used in a provision of this Act dealing with the obligation; or
 - (C) both the person who owns or has other rights in the collateral and the obligor (if the context so requires); and
- (b) includes a trustee for any of the persons referred to in paragraph (a);

"default" means –

- (a) the failure to pay or otherwise perform the obligation secured when due; or
- (b) the occurrence of an event that, under a security agreement, gives a secured creditor the right to enforce a security interest;

"document of title" means a writing issued by or addressed to a bailee –

- (a) that covers goods in the possession of the bailee and are identified or are fungible portions of an identified mass; and
- (b) in which it is stated that the goods identified in it will be delivered to –
 - (i) a named person or to a transferee of that person;
 - (ii) a bearer; or
 - (iii) the order of a named person;

"equipment" means goods that are held by a debtor other than as inventory or consumer goods;

"farm products" include crops, fish, livestock and their unborn offspring and products, whether or not grown or raised naturally or artificially;

“fixture” means a tangible asset that is physically attached to immovable property without losing its separate identity;

"future advance" means the payment of money, the provision of credit, or the giving of value secured by a security interest, occurring after the security agreement has been concluded, whether or not provided or given under an obligation to do so;

"goods" means tangible movable property and includes farm products, inventory, equipment, consumer goods, trees that have been severed, and petroleum or minerals that have been extracted;

“Government lien” means tax and customs liens issued by the Government of The Bahamas;

"initial notice" means a notice registered in the Collateral Registry in such form as may be prescribed in order to effect a registration of a security interest;

“insolvency representative” means a trustee, liquidator or other official appointed in respect of a debtor for the purposes of an insolvency proceeding;

"intangible asset" means movable property other than goods, and includes accounts receivable, choses in action, deposit accounts, electronic negotiable instruments and documents of title, and intellectual property rights;

"intermediated securities" means securities credited to a securities account or rights or interests in securities resulting from the credit of securities to a securities account, which is maintained by an intermediary, including a central securities depository;

"inventory" means goods that are –

- (a) held by a person for sale or lease, or that have been leased by the person as lessor;
- (b) to be provided or have been provided under a contract for services;
- (c) raw materials or work in progress; or
- (d) materials used or consumed in a business;

"investment security" means a writing, whether or not it is in the form of a security certificate, that is recognised in a place in which it is issued or dealt with as a warrant, option, right to participate, or other interest in property, or that evidences an obligation of the issuer, and that, in the ordinary course of business, is transferred by –

- (a) delivery with any necessary endorsement, assignment, or registration in the records of the issuer or agent of the issuer;
- (b) an entry in the records of a clearing house or central securities depository;
- (c) an entry in the records maintained for that purpose by or on behalf of the issuer; or
- (d) an entry in the records maintained for that purpose by or on behalf of the nominee, but does not include a writing that evidences a monetary obligation that is secured by an interest in land;

"land" includes all estates and interests, whether freehold or leasehold, in immovable property;

“mass” means a tangible asset other than money which results when one tangible asset is so commingled with one or more tangible assets that they have lost their separate identities;

"Minister" means the Minister responsible for secured transaction matters;

"movable property” means any tangible or intangible property, other than immovable property, and includes goods, chattel paper, documents of title, investment securities, money and negotiable instruments;

"negotiable instrument" means –

- (a) a bill of exchange or promissory note within the meaning of the Bills of Exchange Act, 1882 (Chp. 335); or
- (b) any other writing that evidences a right to payment of money and is of a kind that, in the ordinary course of business, is transferred by delivery with any necessary endorsement, but does not include chattel paper, documents of title or investment security;

“notice” means an initial notice, an amendment notice or a cancellation notice;

"perfected security interest" means a security interest that has been created and becomes effective against third parties by control, possession, or registration, as the case may be;

"possession" means the actual or apparent possession or control of a tangible asset by a person or the person's agent;

“priority” means the right of a person in collateral in preference to the right of a competing claimant;

"proceeds" means identifiable or traceable movable property received as a result of sale, other disposition, collection, lease or licence of collateral, including proceeds of proceeds, distributions, or insurance proceeds and claims arising from defects in, damage to or loss of collateral;

"purchase" means taking by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue, gift or any other consensual transaction that creates an interest in movable property;

"purchase money security interest" means –

- (a) a security interest taken in collateral by a seller that secures the obligation to pay any unpaid portion of the purchase price of the collateral;
- (b) a security interest taken in collateral by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights;
- (c) the interest of a lessor of goods under a lease for a term of more than one year; or
- (d) the interest of a consignor who delivers goods to a consignee under a commercial consignment, but does not include a transaction of sale and lease back to the seller;

"receivable" means a right to payment of a monetary obligation that is not evidenced by chattel paper, a negotiable instrument or an investment security, whether or not that obligation has been earned by performance;

"Registrar” means the Registrar of the Collateral Registry appointed under section 5 and includes any Deputy or Assistant Registrar of the Collateral Registry;

"secured creditor" means a person in whose favour a security interest is granted, including -

- (a) a consignor;
- (b) a lessor;
- (c) a transferee under an outright transfer of a receivable by agreement;

- (d) a seller who reserved title to the sold goods;
- (e) a trustee or agent of the person referred to in paragraphs (a) to (d); or
- (f) a person holding the security for a debt owed to him.

"security agreement" means an agreement between the debtor and secured creditor that creates or provides for a security interest;

"security interest" means a property right in movable property that is created by an agreement to secure payment or other performance of an obligation, regardless of whether the parties have denominated it as a security interest, and includes, whether or not the interest secures payment or performance of an obligation, the interest of a lessor for a term of more than one year, the right of a seller with retained title, and the interest of a transferee of an account or chattel paper, but it does not include a personal right against a guarantor or other person liable for the payment of the secured obligation; and

"tangible asset" means every form of corporeal movable property, including goods, money, inventory, equipment, consumer goods, accessions, fixtures, negotiable instruments and negotiable instruments in paper form;

"value" means any consideration that is sufficient to support a simple contract and includes an antecedent debt or liability and a binding commitment to provide future value.

"writing" includes an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.

- (2) Except as otherwise provided in this Act, the determination of whether goods are consumer goods, equipment, farm products or inventory is to be made at the time when the security agreement is concluded and the secured creditor may rely on the representations of the debtor as to the intended use.

3. Application of Act

- (1) Notwithstanding any other written law, and subject to subsection (2), this Act applies to –
 - (a) every transaction that in substance creates a security interest, without regard to the form of the transaction, the type of movable property, the status of the debtor, secured creditor, the person who holds title to the collateral, or the nature of the secured obligation;
 - (b) without limiting the generality of subsection (1) (a),–
 - (i) a conditional sale agreement, including an agreement to sell subject to retention of title;
 - (ii) a hire-purchase agreement or finance lease;
 - (iii) a commercial consignment;
 - (iv) a fixed and floating charge;
 - (v) a trust deed;
 - (vi) a chattel mortgage; and

- (vii) a pledge;
 - (c) a lease of goods for a term of more than one year, even though the lease may not secure payment or performance of an obligation;
 - (d) an outright assignment of receivables, even though the assignment may not secure payment or performance of an obligation;
 - (e) a security interest created by judgment of a court, and
 - (f) a security interest created by a Government Lien.
- (2) This Act does not apply to –
- (a) any right of set-off whether or not arising under or from financial contracts governed by netting agreements;
 - (b) an interest created or provided for by any of the following transactions –
 - (i) the creation or transfer of an interest in land, other than the transfer of a right to payment including pursuant to a lease of immovable property, a transfer of rental payment payable under a lease for land;
 - (ii) except as otherwise provided in this Act, a transfer of a present or future claim to wages, salary, pay, commission or any other compensation for labour or personal services of an employee;
 - (iii) an assignment for the general benefit of creditors of the person making the assignment;
 - (iv) a transfer of a right to damages in tort not related to commercial activity;
 - (v) the registration of a transfer, assignment, or mortgage of a ship under the [Bahamas Maritime Authority Act];
 - (vi) the registration of a transfer, assignment or mortgage of an aircraft and aircraft engines under the [Civil Aviation Act];
 - (vii) an assignment of accounts receivable made solely to facilitate the collection of accounts receivable for the assignor;
 - (viii) a transfer or mortgage of a licence, concession or other personal privilege issued or granted under any other written law for which a security interest is prohibited; and
 - (c) intermediated securities.

4. General standard of conduct

A person must, in the exercise of a right or performance of a duty, act in good faith and in a commercially reasonable manner.

PART II - ESTABLISHMENT OF COLLATERAL REGISTRY

5. Collateral Registry

- (1) The Collateral Registry shall be responsible for the registration of security interests in movable property under this Act.
- (2) The Collateral Registry shall be kept in electronic form providing for –
 - (a) the registration of information in respect of movable property security interests directly in the Collateral Registry by electronic means in the manner and form prescribed;
 - (b) the assignment of a registration number to each initial notice, amendment notice, and termination notice registered under this Part, together with a notation date and time of registration;
 - (c) the Collateral Registry to be searchable; and
 - (d) any other feature the Registrar thinks necessary.

6. Registrar and other officers

- (1) The Minister may appoint a Registrar of the Collateral Registry who shall hold office on [terms to be specified by the Minister.]
- (2) The Registrar of the Collateral Registry shall be responsible for –
 - (a) ensuring that the Collateral Registry is maintained in accordance with this Act; and
 - (b) the performance of the functions assigned to the Registrar by this Act, which functions may be carried out by any member of the staff of the Collateral Registry under the direction of the Registrar.
- (3) The Registrar may, subject to such conditions as the Registrar thinks fit, delegate to the Deputy Registrar or Assistant Registrar any of the powers or functions of the Registrar under this Act, except the power of delegation.
- (4) The Registrar may continue to exercise the power or perform the function notwithstanding the delegation of that power or function.

PART III - SECURITY INTERESTS

7. Creation of security interest and effectiveness of security agreement

- (1) A security interest in movable property may be created or provided for by a security agreement between a debtor and a secured creditor and perfected against third parties in accordance with this Act.
- (2) Except as otherwise provided by this Act or any other written law, a security agreement is effective between the debtor and the secured creditor according to its terms.
- (3) A security agreement is enforceable between a debtor and a secured creditor if –
 - (a) the debtor has signed a security agreement which:

- (i) reflects the intent of the parties to create a security interest;
 - (ii) identifies the secured creditor and the debtor;
 - (iii) contains a description of the collateral that reasonably enables the collateral to be identified in accordance with section 10 or by a serial number for a vehicle that is not held as inventory;
 - (iv) describes the secured obligation in accordance with section 8(2);
 - (v) states the maximum amount for which the security right may be enforced;
- (b) value is given by the secured creditor; and
 - (c) the debtor has rights in the collateral or the power to encumber it.

8. Obligations that may be secured

- (1) A security agreement may secure one or more obligations of any type, present or future, determined or determinable, conditional or unconditional, fixed or floating.
- (2) A description of secured obligations that indicates that the security interest secures “all obligations” owed to the secured creditor satisfies the standard in subsection (3)(a)(iv) of section 7.

9. Assets that may be encumbered

A security agreement may encumber –

- (a) any type of movable asset;
- (b) a part of or an undivided right in a movable asset;
- (c) a generic category of movable assets; or
- (d) all of a debtor’s movable assets.

10. Description of collateral in security agreement

- (1) A description of the collateral satisfies the standard in subsection (3)(a)(iii) of section 7 if the description indicates that –
 - (a) a security interest is taken in all the debtor’s movable assets, or in all the debtor’s movable assets within a generic category;
 - (b) a security interest is taken in all of the debtor's present and after-acquired property; or
 - (c) a security interest is taken in all of the debtor's present and after-acquired property except for specified items or kinds of movable property.
- (2) For the purposes of subsection (1), a description of the collateral is inadequate if the collateral is described as consumer goods without specific reference to the item or kind of collateral.

- (3) Except as otherwise provided in this Act, a security interest in proceeds is enforceable against a third party, whether or not the security agreement providing for the security interest contains a description of the proceeds.

11. Security interests in after-acquired property

A security agreement may provide for security interests in after-acquired property, which shall not become an enforceable security interest until the debtor acquires rights in it or the power to encumber it.

12. Security interests in proceeds

- (1) Except as otherwise provided in this Act, a security interest in the collateral that is dealt with or otherwise gives rise to proceeds shall –
 - (a) continue in the collateral unless the secured creditor expressly or impliedly authorised the dealing with the security interest; and
 - (b) extend to the proceeds, but if the secured creditor enforces the security interest against both the collateral and the proceeds, the amount secured by the security interest in collateral and the proceeds is limited to the value of the collateral at the date of the dealing that gave rise to the proceeds.
- (2) Where proceeds are funds credited to a deposit account or are commingled with other funds:
 - (a) the security interest extends to the commingled funds, notwithstanding that the proceeds have ceased to be identifiable;
 - (b) the security interest in the commingled funds is limited to the amount of funds immediately before they were commingled; and
 - (c) if at any time after the commingling, the balance credited to the deposit account or the amount of money is less than the amount of the proceeds immediately before they were commingled, the security interest in the commingled funds is limited to the lowest amount between the time when the proceeds were commingled and the time when the security interest in the proceeds is claimed.

13. Tangible assets commingled in mass or made into product

- (1) A security interest created in a tangible asset before becoming commingled in a mass—
 - (a) continues in the mass; and
 - (b) is limited to the same proportion of the mass as the quantity of the collateral bore to the quantity of the entire mass immediately after the commingling.
- (2) A security interest created in a tangible asset that is made into a product—
 - (a) extends to the product; and
 - (b) is limited to the value of the collateral immediately before it become part of the product.

14. Security interest in accounts receivable

- (1) A security interest in an account receivable is effective as between the debtor and the secured creditor, and against the account debtor, notwithstanding a provision or agreement limiting the debtor's right to create a security interest in the receivable.
- (2) Nothing in subsection (1) affects any obligation or liability of the debtor for breach of the agreement prohibiting the use of the account receivable as collateral, but the account debtor may not avoid the contract giving rise to the receivable or the security agreement on the sole ground of the breach of that agreement, or raise against the secured creditor any claim it may have as a result of such a breach against the debtor.

15. Personal or property right securing payment or other performance

- (1) A secured creditor with a security interest in an account receivable or other intangible asset, or in a negotiable instrument has the benefit of any personal or property right that secures or supports payment or other performance of the collateral without a new act of transfer.
- (2) Where the right referred to in subsection (1) is transferable under applicable law only with a new act of transfer, the debtor is obliged to transfer the benefit of that right to the secured creditor.

16. Tangible assets covered by negotiable instruments

A security interest in a negotiable instrument extends to the tangible asset covered by the instrument, provided that the issuer is in possession of the asset at the time the security right in the instrument is created.

17. Tangible assets and intellectual property

A security interest in a tangible asset with respect to which intellectual property is used does not extend to the intellectual property, and a security interest in the intellectual property does not extend to the tangible asset.

18. Extinguishment of security interests

A security interest is extinguished when all secured obligations have been discharged and there are no outstanding commitments to extend additional credit secured by the security interest.

PART IV - PERFECTION OF SECURITY INTERESTS

19. Methods for perfection of a security interest

- (1) A security interest is perfected when –
 - (a) the security interest is created; and
 - (b) either -
 - (i) an initial notice is registered in respect of the security interest in the Collateral Registry;
 - (ii) the secured creditor or another person on behalf of the secured creditor has possession of the collateral that is a tangible asset (except where possession is a result of seizure or repossession); or

- (iii) the secured creditor or another person on behalf of the secured creditor has control of the collateral that is the right to payment of funds credited to a deposit account or investment security.
- (2) Subsection (1) applies regardless of the order in which creation referred to in subsection (1)(a) and either of the steps referred to in subsection (1)(b) occur.

20. Perfection of security interest in proceeds

- (1) If a security interest in an asset is perfected, a security interest in the proceeds of the asset is also perfected without any further act and will be continuously perfected, provided that the proceeds are in the form of money, accounts receivable, negotiable instruments or deposit accounts.
- (2) If a security interest in an asset is perfected, and the proceeds of the asset are in a form other than money, accounts receivable, negotiable instruments or rights to payment of funds credited to a deposit account, the security interest in the proceeds must be perfected by one of the means available to the relevant type of proceeds within [fifteen] working days after the proceeds arise.
- (3) If a secured creditor fails to perfect a security interest in non-cash proceeds pursuant to subsection (2), the security interest in such proceeds shall be unperfected and ineffective against claims by third parties.

21. Perfection of security interests in mass or product

If a security interest in a tangible asset is perfected, a security interest in a mass or product to which the security interest extends under section 13 is perfected without any further act.

22. Perfection of security interests in consumer goods

A security interest in consumer goods with an acquisition price below an amount to be determined by regulations is perfected automatically upon its creation without further action.

23. Negotiable instruments and tangible assets

- (1) A security interest in a negotiable instrument may be perfected by the registration of a notice with the Collateral Registry or by possession of the negotiable instrument by the secured creditor.
- (2) A perfected security interest in a negotiable instrument extends to the tangible asset covered by the negotiable instrument.
- (3) A security interest in a negotiable instrument perfected by possession of the instrument remains perfected for a period of ten days after the instrument or the asset covered by the instrument has been returned to the debtor or another person for the purpose of dealing with the asset.

24. Money and deposit accounts

- (1) A security interest in money may be perfected only by the secured creditor taking possession of the money or by taking control of the deposit account, except in the case of cash proceeds as provided in section 12 of this Act.
- (2) A security interest in funds credited to a deposit account may be perfected:

- (a) automatically upon the creation of a security interest if the secured creditor is the deposit-taking institution that maintains the deposit account;
- (b) upon conclusion of a control agreement; or
- (c) upon the secured creditor becoming the account holder.

25. Security interests in farm products

- (1) For purposes of determining whether a security interest in a farm product exists, it does not matter whether the farm product is stored, kept, growing or grown, as the case may be, on any land or premises.
- (2) A perfected security interest in a farm product shall not be extinguished or prejudicially affected by a subsequent sale, lease, mortgage or other encumbrance of, or upon, the land on which the farm product is stored, kept, growing or grown as the case may be.

26. Change in method of perfection

A perfected security interest remains perfected notwithstanding a change in the method of perfection, provided that there is no time when the security interest is unperfected.

27. Lapses in perfection

If a perfected security interest lapses, perfection may be re-established, but the security interest is perfected only as of the time the perfection is re-established.

PART V - PRIORITY BETWEEN SECURITY INTERESTS

28. Priority of security interests in same collateral

- (1) Where this Act does not provide another method for determining priority between security interests in the same collateral –
 - (a) a perfected security interest shall have priority over an unperfected security interest;
 - (b) priority between perfected security interests shall be determined by the order of whichever of the following first occurs –
 - (i) the registration of an initial notice in the Collateral Registry;
 - (ii) the secured creditor, or another person acting on behalf of the secured creditor, taking possession of the collateral (except where possession is a result of seizure or repossession); or
 - (iii) the secured creditor, or another person acting on behalf of the secured creditor, acquiring control of the collateral; and
 - (c) priority between unperfected security interests in the same collateral shall be determined by the order of creation of the security interests.

- (2) A security interest that is first perfected in one manner remains perfected and retains its priority despite a change in the method for perfection, provided that there is no time when the security interest is unperfected.
- (3) Perfection of a security interest that lapses may be re-established by registration, but the security interest is perfected only as of the date of registration.
- (4) Subsection (1) shall continue during insolvency and liquidation.

29. Transfer of security interests

- (1) If a secured creditor transfers a security interest in whole or in part, the secured creditor may register an amendment notice to reflect the transfer.
- (2) A perfected security interest that is transferred shall have the same priority as it had at the time of the transfer, whether or not an amendment notice has been registered.

30. Subordination

- (1) A secured creditor may, in a security agreement or other agreement, subordinate its security interest to any other interest.
- (2) No agreement to subordinate a security interest shall adversely affect the rights of a person who is not a party to the agreement.
- (3) An agreement to subordinate a security interest shall be effective according to its terms and may also be enforced by a third party if the third party is the person for whose benefit the agreement is intended.

31. Priority of a security interest in proceeds

If a security interest in collateral is perfected, the priority of a security interest in the proceeds is determined by using the same date used to determine the priority of the security interest in the original collateral.

32. Priority of security interest transferred by debtor

If a debtor transfers an interest in collateral which, at the time of the transfer is subject to a perfected security interest, the perfected security interest shall have priority over any other security interest created by the transferee.

33. Transfer of debtor's interest in collateral with prior consent of secured creditor

- (1) If a security interest is perfected by registration and the debtor, with the prior consent of the secured creditor, transfers all or part of its interest in the collateral, the security interest in the transferred collateral becomes unperfected fifteen days after the transfer is made unless the secured creditor registers an amendment notice within such fifteen days.
- (2) Where a security interest is perfected by registration and the debtor, without the prior consent of the secured creditor, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected thirty days after the later of –

- (a) the transfer, if the secured creditor had prior knowledge of the transfer and if the secured creditor had, at the time of the transfer, the information required to register an amendment notice; or
- (b) the day the secured creditor learns the information required to register an amendment notice, unless the secured creditor registers an amendment notice or takes possession of the collateral within such thirty days.

34. Competing security interest in mass or product

- (1) If two or more perfected security interests in the same tangible asset that subsequently becomes part of a mass or product continues in the mass or product, the priority of each security interest in the mass or product is the same as the priority that each security interest had in that tangible asset immediately before the tangible asset became part of the mass or product.
- (2) If more than one security interest extends to the same mass or product and each was a security interest in a separate tangible asset at the time of commingling, each such security interest shall rank in proportion to the value of the collateral at the time it became commingled.

35. Security interest in accessions

- (1) A security interest in a tangible asset that becomes an accession shall continue in the accession.
- (2) If a security interest is perfected when the tangible asset becomes an accession, the security interest remains perfected in the accession.

36. Priority of security interests in accessions

A security interest in a tangible asset that is created at the time when the tangible asset becomes an accession shall have priority over a claim to the tangible asset as an accession made by a person with an interest in the whole.

37. Priority of purchase money security interest in fixtures

- (1) A security interest may be created in tangible assets which are fixtures and may continue in the tangible assets after they become fixtures.
- (2) A purchase money security interest in fixtures shall have priority as against a third party which has existing rights in the immovable property, provided that a notice is registered in the Collateral Registry before the third party acquires rights in the immovable property.

38. Buyers and other transferees, lessees, and licensees of collateral

- (1) If the collateral is sold or otherwise transferred, leased or licensed and a security interest in that collateral is perfected, the buyer, transferee, lessee or licensee acquires its rights subject to the security interest, except as otherwise provided in this section.
- (2) A buyer or other transferee of the collateral acquires its rights free of the security interest if the secured creditor authorizes the sale or other transfer of the asset free of the security interest.

- (3) The rights of a lessee or licensee are not affected by a security interest if the secured creditor authorizes the debtor to lease or licence the asset.
- (4) The buyer of a tangible asset sold in the ordinary course of the seller's business acquires its rights free of the security interest, provided that, at the time of the conclusion of the sale agreement, the buyer does not have knowledge that the sale violates the rights of the secured creditor under the security agreement.
- (5) The rights of a lessee of a tangible asset leased in the ordinary course of the lessor's business are not affected by the security interest, provided that, at the time of the conclusion of the lease agreement, the lessee does not have knowledge that the lease violates the rights of the secured creditor under the security agreement.
- (6) The rights of a non-exclusive licensee of an intangible asset licensed in the ordinary course of the licensor's business are not affected by a security interest, provided that, at the time of the conclusion of the license agreement, the licensee does not have knowledge that the license violates the rights of the secured creditor under the security agreement.
- (7) If the buyer or other transferee of a tangible asset acquires its rights free of a security interest, any subsequent buyer or other transferee also acquires its rights free of that security interest.
- (8) If the rights of a lessee of a tangible asset, or a licensee of an intangible asset, are not affected by the security interest, the rights of any sub-lessee or sub-licensee are also unaffected by that security interest.
- (9) A buyer acquires its rights free of, and the rights of a lessee are not affected by, an acquisition of security interest in consumer goods, unless the security interest is perfected by registration of a notice or by taking possession before the buyer or lessee acquire its rights in the asset.

39. Security interests competing with judgment creditors

- (1) The right of a judgment creditor has priority over a security interest if, before the security interest is perfected, the judgment creditor has registered a notice with the Collateral Registry.
- (2) If a security interest is perfected before the judgment creditor registers a notice, the security interest has priority, but that priority is limited to the greater of the credit extended by the secured creditor-
 - (a) within [thirty] days from the time the secured creditor received a notification from the judgment creditor that the judgment creditor had registered a notice with the Collateral Registry; or
 - (b) pursuant to an irrevocable commitment to extend credit, if the commitment was made before the judgment creditor notified the secured creditor that the judgment creditor had registered a notice with the Collateral Registry.

40. Priority of statutory liens

A statutory lien on tangible assets, which secures payment or performance of an obligation for materials or services provided with respect to assets that are subject to a security interest, has priority over the security interest only up to the reasonable value of the materials and services rendered, if:

- (a) the materials or services relating to the lien were provided in the ordinary course of business; and
- (b) the holder of the possessory lien remains in possession of the asset.

41. Priority of purchase money security interests

Subject to section 12 a purchase money security interest shall have priority over a non-purchase money security interest in the same collateral given by the same debtor if –

- (a) in the case of collateral (other than inventory) or its proceeds, the purchase money security interest in the collateral or its proceeds is perfected within ten working days after the day on which the debtor, or another person at the request of the debtor, obtained possession of the collateral;
- (b) in the case of inventory or its proceeds -
 - (i) the purchase money security interest in the inventory or its proceeds is perfected at the time the debtor, or another person at the request of the debtor, obtains possession of the inventory;
 - (ii) before the debtor receives possession of the inventory, the purchase money secured creditor gives notice in writing to all previous secured parties who have registered an initial notice that describes the collateral as, or as including, inventory or receivables; and
 - (iii) the notice referred to in subparagraph (ii) states that the person giving it has or expects to acquire a purchase-money security interest in inventory of the debtor, describing the inventory to reasonably allow its identification; or
- (b) in the case of an intangible or its proceeds, the purchase money security interest in the intangible or its proceeds is perfected within ten working days after the day on which the security interest in the intangible was created.

42. Competing purchase money security interest

- (1) A purchase money security interest of a seller or lessor shall have priority over a competing purchase money security interest of a secured creditor other than a seller or lessor.
- (2) A perfected purchase money security interest in a tangible asset that extends to a mass or product has priority over a non-purchase money security interest granted by the same debtor in the mass or product.

43. Future advances and future collateral

- (1) Subject to the rights of a judgment creditor under section 39, the priority of a security interest extends to all secured obligations, including obligations incurred after the security interest is perfected.

- (2) The priority of a security interest covers all collateral described in a notice registered in the Collateral Registry, whether they are acquired by the debtor or come into existence before or after the time of registration.

44. Knowledge of security interest irrelevant

Knowledge of the existence of a security interest in favour of another person on the part of the secured creditor does not affect its priority under this Act.

45. Negotiable instruments and documents of title

A purchaser of a negotiable instrument, document of title, chattel paper or security certificate shall have priority over a perfected security interest in the negotiable instrument, document of title, chattel paper or security certificate if the purchaser –

- (a) gave value; and
- (b) took possession of the negotiable instrument or document of title without knowledge that the transaction was a breach of the security agreement to which the security interest relates.

46. Funds credited to a deposit account

- (1) A security interest in a right to payment of funds credited to a deposit account perfected by the secured creditor becoming the account holder has priority over a competing security interest that is perfected by any other method.
- (2) A security interest in a right to payment of funds, credited to a deposit account where the secured creditor is the deposit-taking institution, has priority over a competing security interest, perfected by any other method, except for the secured creditor becoming the account holder.
- (3) A security interest in a right to payment of funds credited to a deposit account perfected by a control agreement has priority over a competing security interest except as provided in subsections (1) and (2).
- (4) The order of priority among competing security interests in a right to payment of funds credited to a deposit account that are perfected by conclusion of control agreements is determined on the basis of the time of the conclusion of the control agreements.
- (6) A transferee of funds from a deposit account pursuant to a transfer initiated or authorized by the debtor, acquires its rights free of any security interest in the funds unless the transferee has knowledge that the transaction violates the rights of the secured creditor under the security agreement.

47. Money

A transferee of money takes the money free of a security interest unless the transferee has knowledge that the transfer violates the rights of a secured creditor under the security agreement.

48. Payment system

A creditor who receives payment of a debt owing by a debtor through any payment system shall receive the payment free of a security interest whether or not the creditor had knowledge of the security interest at the time of the payment.

49. Unlisted securities

A transferee of unlisted securities who takes possession of the certificated security and gives value without knowledge that the sale or other transfer is in violation of the rights of the secured creditor under the security agreement acquires its rights free of the security interest.

50. Protection of the account debtor

- (1) Except as otherwise provided in this Act, the creation of a security interest in a receivable does not, without the consent of the debtor to whom the receivable is due, affect its rights and obligations, including the payment terms contained in the contract giving rise to the receivable.
- (2) A payment instruction may only change the person, address or account to which the debtor is required to make payment from the receivable.

51. Notification of a security interest in a receivable

Notification of a security right in a receivable or a payment instruction is effective when received by the account debtor if it reasonably identifies the encumbered receivable and the secured creditor and is in a language that is reasonably expected to inform the account debtor about its contents.

52. Payment by the account debtor

- (1) Until the account debtor receives notification of a security interest in a receivable, the account debtor is discharged by paying in accordance with the contract giving rise to the receivable.
- (2) After the account debtor receives notification of a security interest in a receivable, the account debtor is discharged only by paying the secured creditor or in accordance with that payment instruction.

PART VI - REGISTRATION OF SECURITY INTERESTS

53. Registration of notices of security interest

- (1) An initial notice may be registered before or after a security agreement to which the notice relates is concluded.
- (2) An initial notice may relate to one or more security agreements

54. Registration of an initial notice

- (1) A person may register an initial notice in the Collateral Registry by entering in the initial notice the following particulars in respect of the movable property security interest -
 - (a) the debtor's unique identifier, name and address in the prescribed form;
 - (b) the secured creditor's unique identifier, name and address in the prescribed form;

- (c) a description of the collateral in accordance with section 55;
- (d) the maximum amount for which the security may be enforced;
- (e) the term for which the security interest shall be effective (the registration period) which shall in no case exceed five years; and
- (f) any other particulars as may be prescribed by Regulations.

55. Description of collateral

- (1) The collateral must be described in a manner that reasonably allows its identification.
- (2) A description that indicates that the collateral consists of all of the movable property of the debtor, or of all of the movable property of the debtor within a generic category, is in accordance with subsection (1).
- (3) Where the collateral is a motor vehicle, the description must include the vehicle identification number, unless the motor vehicle is held as inventory.

56. Consent to register initial notice or amendment notice

- (1) A debtor who enters into a security agreement shall consent to the registration of an initial notice and any amendments to the notice.
- (2) The debtor may consent to the registration of an initial notice before or after the registration of an initial or amendment notice.
- (3) The debtor's consent may be indicated in the security agreement.
- (4) The Registrar may not require evidence of the existence of the authorization of the debtor.

57. Date and time of effectiveness of the registration of a notice

The registration of an initial notice, amendment notice, or cancellation notice is effective from the date and time when the information in the notice is entered in the Collateral Registry and a registration number is assigned, so that it is accessible to a person who conducts a search of the Collateral Registry records.

58. Validity of registration and errors in required information by registrant

- (1) The validity of the registration of an initial notice shall not be affected by a defect, irregularity, omission or error unless the defect, irregularity, omission or error is seriously misleading.
- (2) The registration shall be invalid if there is a seriously misleading defect, irregularity, omission or error in –
 - (a) the unique identifier of a debtor; or
 - (b) the serial number of the collateral, if so assigned when the vehicle is not held as inventory.

- (3) An incorrect description of certain collateral shall not render the registration invalid with respect to other collateral sufficiently described in the initial notice.

59. Period of validity of initial notice

The registration of an initial notice is effective for the period indicated by the registrant in the designated field of the notice.

60. Renewal of registration

A registration of an initial notice may be renewed by registering an amendment notice renewing the registration at any time before the expiration of the registration period specified in the initial notice.

61. Registration of transfer of perfected security interests

- (1) If a secured creditor transfers a security interest perfected by registration, the transferred security interest shall remain effective.
- (2) The transferee is not required to amend the registration that names the transferor as the secured creditor or to register a new initial notice against the debtor.

62. Registration of subordinated security interests

If a secured creditor has subordinated a security interest to the interest of another person, an amendment notice must be registered to disclose the subordination at any time before the expiration of the period of registration specified in the initial notice.

63. Amendment or cancellation of registration

A secured creditor may amend or cancel a registration of an initial notice by registering an amendment notice or cancellation notice, as the case may be, at any time before the expiration of the registration period specified in the initial notice.

64. Cancellation of registration

The secured creditor shall register a cancellation notice discharging the registration within fifteen clear days after all obligations under the security agreement creating the security interest are performed, unless the registration period lapses before the expiration of the fifteen-day period.

65. Debtor may demand registration of amendment or cancellation notice

- (1) Without prejudice to section 64, the debtor may demand in writing that the secured creditor amend or cancel the registration of the initial notice where -
 - (a) all of the obligations under the security agreement to which the registration relates have been performed and there is no commitment to make future advances;
 - (b) the secured creditor has agreed to release part of the collateral described in the registered initial notice;

- (c) the collateral described in the registered initial notice includes an item or kind of property that is not collateral under a security agreement between the secured creditor and the debtor;
 - (d) no security agreement exists between the parties; or
 - (e) the security interest is extinguished in accordance with this Act.
- (2) On receipt of the demand submitted under subsection (1), the secured creditor shall register an amendment notice or cancellation notice within fifteen clear days.
 - (3) A secured creditor shall not charge any fee on the demand by the debtor under subsection (1).
 - (4) If the secured creditor fails to amend or discharge the registration, the debtor may apply to the Court to issue an order amending or discharging the registration, as the case may be.

66. Court order to amend or discharge

- (1) The Court may, on application by the debtor under section 65(4), order the Registrar to amend or cancel the registration of the initial notice.
- (2) The Court may make any other order as it thinks proper for the purpose of giving effect to an order under subsection (1).

67. Search in register

- (1) An initial notice shall not be effective against third parties until it is searchable in the register.
- (2) A person may search the register as to -
 - (a) the unique identifier of the debtor;
 - (b) the serial number of the collateral, if so assigned; and
 - (c) the registration number assigned to the registered initial notice.
- (3) A search in the register may be carried out without assigning any reason for the search.

68. Offences on registration and search

A person who registers an initial notice or carries out a search in the register with a frivolous, malicious or criminal purpose or intent commits an offence and is liable on summary conviction to a fine not exceeding [ten thousand] dollars.

69. Search certificate as evidence

- (1) The Collateral Registry may, on request and payment of the prescribed fee, issue a search certificate which shall be conclusive evidence of the existence of information in the Collateral Registry as to the date and time of the issuance.
- (2) Notwithstanding section (1), the Collateral Registry shall issue a certificate confirming that an initial, amendment or cancellation notice has been registered upon registration.

PART VII - ENFORCEMENT OF SECURITY INTERESTS

70. Post-default rights

The parties to a security agreement are entitled to exercise any right under this Part or any other right provided in the security agreement or any other written law.

71. General principle of enforceability

- (1) If the debtor is in default, subject to the rights of a person, including a lessee or licensee, with superior rights to possession, a secured creditor may -
 - (a) take possession of the collateral; or
 - (b) without removal, render the collateral unusable in accordance with section 73.
- (2) A secured creditor may proceed under this section -
 - (a) to judicial process; or
 - (b) without judicial process, if the debtor does not resist the removal of the collateral.
- (3) The commencement of enforcement requires registration of the enforcement form which shall identify –
 - (a) the debtor;
 - (b) the secured creditor; and
 - (c) the collateral against which enforcement is sought.
- (4) The secured creditor shall give the debtor and any person in possession of the collateral notice of default and of the secured creditor's intention to repossess the collateral.

72. Right of higher-ranking secured creditor to take over enforcement

- (1) Notwithstanding commencement of enforcement by another creditor, a secured creditor whose security interest has priority over that of the enforcing creditor is entitled to take over enforcement at any time before the earlier of:
 - (a) the sale or other disposition, the acquisition or collection of the collateral; and
 - (b) the conclusion of an agreement by the secured creditor for the sale or other disposition of the collateral.

- (2) The right of the higher-ranking secured creditor to take over enforcement includes the right to enforce the security interest.

73. Secured creditor may render collateral unusable

- (1) A secured creditor with priority over all other secured parties may render the collateral unusable if the collateral is of a kind –
 - (a) that cannot be readily removed from the premises of the debtor; or
 - (b) for which adequate storage facilities are not readily available.
- (2) If subsection (1) applies, the secured creditor may dispose of the collateral on the premises of the debtor:

Provided that it shall not cause the person in possession of the premises, if other than the debtor, any greater inconvenience than is necessary.

74. Secured creditor may apply certain collateral in satisfaction of secured obligation

- (1) Upon default, a secured creditor with a security interest in an account receivable, negotiable instrument, or a right to funds credited to a deposit account is entitled to collect payment directly from the account debtor of the account receivable, obligor under the negotiable instrument, or deposit-taking institution and shall apply the funds collected to satisfy the obligation secured by the security interest after deducting the secured creditor's reasonable collection expenses.
- (2) The secured creditor may exercise the right to collect under subsection (1) prior to default, if the parties so agree.
- (3) The secured creditor exercising the right to collect under subsection (1) or (2) is also entitled to enforce any personal or property right that secures or supports payment of the collateral.
- (4) If a deposit-taking institution holds a security interest in a deposit account perfected automatically, it may apply the balance of the deposit account to the secured obligation.
- (5) If a secured creditor holds a security interest in the funds credited to a deposit account which is perfected by a control agreement, the secured creditor may instruct the deposit-taking institution to pay the balance of the deposit account to the secured creditor.

75. Collection of payment by an outright transferee of a receivable

- (1) In the case of an outright transfer of an account receivable to the secured creditor by agreement, the secured creditor is entitled to collect the account receivable at any time after payment becomes due.
- (2) The secured creditor exercising the right to collect under subsection (1), is also entitled to enforce any personal or property right that secures or supports payment of the account receivable.

76. Collateral at risk

- (1) Notwithstanding section 71, a secured creditor may take possession of the collateral, with or without leave of the Court, and sell the collateral when –

- (a) the debtor is in default under the security agreement; and
 - (b) the collateral is at risk.
- (2) Pursuant to subsection (1), collateral is at risk if the secured creditor has reasonable grounds to believe that the collateral has been or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold or otherwise disposed of contrary to the provisions of the security agreement.

77. Repair and preparation of collateral

- (1) The collateral may be disposed of by the secured creditor in its existing condition or after repair, process or preparation for disposition.
- (2) The cost of the repair, process or preparation may be included in the expenses of enforcement.

78. Duty of secured creditor selling collateral

A secured creditor who exercises a power of sale of the collateral under section 76 has a duty to obtain the best price reasonably obtainable at the time of sale to -

- (a) the debtor;
- (b) any person who has registered an initial notice in the collateral that is effective at the time the secured creditor repossessed the collateral; and
- (c) any person who has given the secured creditor notice that that person claims an interest in the collateral.

79. Power of sale applies to document of title and related goods

If the collateral is a document of title, the power of sale provided by section 76 applies to the document of title and to the goods to which it relates.

80. Method of sale of collateral

A secured creditor may effect a sale of the collateral under section 76 by auction, public tender, private sale or any other method as may be provided in the security agreement.

81. Notice of sale of the collateral

- (1) A secured creditor who intends to sell the collateral under section 76 shall, within ten working days before selling the collateral, give notice to the persons referred to in section 78.
- (2) Subsection (1) does not apply if –
 - (a) the collateral may perish within ten working days of the repossession;
 - (b) the secured creditor believes on reasonable grounds that the collateral will decline substantially in value if it is not disposed of immediately;

- (c) the cost of care, maintenance and storage of the collateral is disproportionately large in relation to its value;
 - (d) the collateral consists of inventory;
 - (e) after the secured creditor repossesses the collateral, every person entitled to receive notice under subsection (1) consents in writing to the immediate sale of the collateral; or
 - (f) a Court grants leave to the secured creditor to sell collateral under section 66 without complying with subsection (1).
- (3) Where a security interest extends to the collateral and some of which is as described in subsection (2), the secured creditor may sell the collateral without complying with subsection (1).

82. Buyer of collateral takes free of security interests

The buyer of the collateral in a sale under section 76 shall take it free of any security interest.

83. Secured creditor to give statement of account to debtor

If collateral is sold by a secured creditor under section 76, the secured creditor shall, within fifteen working days after the sale of the collateral, give the persons referred to in section 78 a statement of account in writing, showing –

- (a) the amount of the gross proceeds of sale;
- (b) the amount of the costs and expenses of the sale; and
- (c) the balance owing by the secured creditor to the debtor, or by the debtor to the secured creditor, as the case may be.

84. Secured creditor selling collateral to pay prior ranking secured parties

A secured creditor who has sold the collateral under section 76 shall, before applying the net proceeds of the sale towards the satisfaction of the debt or other obligation secured by the security interest of the secured creditor apply the net proceeds of the sale towards the reasonable costs and expenses of the sale.

85. Distribution of surplus

- (1) For the purposes of this Act, there is a surplus when the net proceeds recovered on disposition of the collateral under this Part exceeds the amount owed by the debtor to the secured creditor.
- (2) If the secured creditor has retained the collateral pursuant to section 87 or sold the collateral under section 76, as the case may be, the secured creditor shall pay the following persons the amount of any surplus in the following order -
 - (a) any person who has a subordinate security interest perfected by registration, in the order of the priority;

- (b) any other person who has given the secured creditor notice that that person claims an interest in the collateral; and
 - (c) the debtor.
- (3) In subsection (1), "net proceeds" means proceeds of the sale after deducting the reasonable costs and expenses of the secured creditor for, and incidental to, taking possession of, holding, storing, repairing, maintaining, valuing, and preparing the sale of, and selling, the collateral.

86. Surplus may be paid into Court

The secured creditor may pay the surplus into Court if there is a question as to who is entitled to receive payment under section 85.

87. Proposal of secured creditor to retain collateral

- (1) A secured creditor with priority over all other secured parties may, after default, propose to retain the collateral in satisfaction of the obligation secured by it.
- (2) The secured creditor shall give notice of the proposal to the persons referred to in section 78.

88. Persons entitled to notice may object to proposal

The secured creditor shall sell the collateral under section 76 if a person who is entitled to a notice under section 81 and whose interest in the collateral would be adversely affected by the proposal of the secured creditor to retain the collateral gives to the secured creditor a notice of objection within ten working days after receiving the notice referred to in section 87.

89. Person making objection may be requested by the secured creditor to prove interest

- (1) The secured creditor may request a person, other than the debtor, who objects to provide proof of the interest of the person.
- (2) If the person to whom subsection (1) applies does not provide proof within ten working days after the request of the secured creditor, the secured creditor may proceed as if no objection were received from the person.

90. Position where persons entitled to notice do not object to retention of collateral by secured creditor

- (1) If no notice of objection is received, the secured creditor shall, at the expiration of the ten day period referred to in section 89 –
 - (a) be deemed to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it; and
 - (b) be entitled to hold or dispose of the collateral free from all rights and interests of the debtor and of any person entitled to receive notice under section 78.

- (2) All security interests in the collateral that are subordinate to the security interest of the secured creditor shall be extinguished upon the expiration of the period referred to in subsection (1).

91. Secured creditor shall not damage goods when removing accession

- (1) A secured creditor who is entitled to repossess an accession under section 71 shall remove the accession from the whole in a manner that causes no greater damage to the other goods or that puts the person in possession of the whole to no greater inconvenience than is necessary for the removal of the accession.
- (2) A person, other than a debtor, who has an interest in the other goods at the time the goods become an accession shall be entitled to reimbursement for any damage to the interest of that person in the other goods caused by the removal of the accession.
- (3) Any reimbursement payable shall not include reimbursement for a reduction in the value of the property caused by the removal of the accession or by the necessity of the replacement of the accession.
- (4) A person entitled to reimbursement under this section may refuse permission to remove the accession until the secured creditor has given adequate security for the reimbursement.

92. Entitled persons may redeem collateral

- (1) At any time before the secured creditor sells the collateral or is deemed to have taken the collateral in satisfaction of the obligation secured by it, a person who is entitled to receive a notice under section 71 may, unless the person otherwise agrees in writing after default, redeem the collateral by –
 - (a) tendering fulfilment of all the obligations secured by the collateral; and
 - (b) paying a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the collateral for sale, if those expenses have actually been incurred by the secured creditor, and any other reasonable expenses incurred by the secured creditor.
- (2) The rights of the debtor to redeem the collateral shall have priority over any other person's right to redeem the collateral.

93. Debtor may reinstate the security agreement

- (1) At any time before the secured creditor sells the collateral or is deemed to have taken the collateral in satisfaction of the obligation secured by it, the debtor may, unless the debtor has otherwise agreed in writing after default, reinstate the security agreement by -
 - (a) paying the sums actually in arrears, exclusive of the operation of an acceleration clause in the security agreement;
 - (b) remedying any other default by reason of which the secured creditor intends to sell the collateral; and
 - (c) paying a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the collateral for sale, if those expenses have

actually been incurred by the secured creditor, and any other reasonable expenses incurred by the secured creditor in connection with the enforcement process.

- (2) Subsection (1) does not apply to any security agreement made or entered into before the commencement of this Act.

94. Limit on reinstatement of security agreement

Unless otherwise agreed, the debtor shall not be entitled to reinstate a security agreement more than twice in each year.

95. Right of secured creditor to inspect land

- (1) A secured creditor may from time to time, at his discretion, at all reasonable times enter on any land owned or leased by a person for the breeding of livestock or planting of crops and inspect any property that is subject to a charge or lien created pursuant to this Act.
- (2) Any person obstructing in any way a secured creditor in making the inspection commits an offence and is liable on summary conviction to a fine not exceeding [ten thousand] dollars.

96. Penalty for disposal of crops contrary to contract

A debtor who disposes of any part of a crop referred to in any security agreement signed by him, or applies any part of the proceeds of sale of any such crops otherwise than in accordance with that agreement, commits an offence and is liable on summary conviction to a fine not exceeding [ten thousand] dollars.

PART VIII - GENERAL

97. Damages

- (1) If a person fails to discharge any duty or obligation imposed by this Act, the person to whom the duty or obligation is owed and any other person who can reasonably be expected to rely on performance of the duty or obligation shall have a right to recover damages for any loss or damage that was reasonably foreseeable as likely to result from the failure.
- (2) Nothing in subsection (1) shall limit or affect any liability that a person may incur under any written law other than this Act.
- (3) In addition to the damages recoverable under subsections (1) and (2), the person who registered an initial notice without authorisation of the debtor shall be responsible to pay to the debtor damages.

98. Secured creditor to provide certain information relating to security interests

- (1) A debtor may request the secured creditor to send or make available to any specified person, at an address specified by the debtor making the request, any of the following information –
 - (a) a summary of a security agreement that creates or provides for a security interest held by the secured creditor in the movable property of the debtor;
 - (b) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness;

- (c) a written approval or correction of an itemised list of movable property indicating which items are collateral, unless the security interest is over all of the movable property of the debtor; or
 - (d) a statement of account indicating the payoff amount needed to fully satisfy the secured obligation.
- (2) A secured creditor shall comply with the request made under subsection (1) within ten working days of its receipt, unless the secured creditor has been exempted under subsection (5).
 - (3) If, without reasonable excuse, the secured creditor fails to comply with the request within the specified period, the debtor making the request may apply to the Court for an order requiring the secured creditor to comply with the request.
 - (4) If the request is made and the secured creditor no longer has an interest in the obligation secured or collateral covered by the registration, the secured creditor shall send or make available to the debtor the name and address of the immediate successor in interest or transferee and, if known, the latest successor in interest or transferee.
 - (5) The Court may, on application by a secured creditor, make an order to exempt the secured creditor from complying with subsections (1) and (2) in whole or in part, or may extend the time for compliance if the Court is satisfied that, in the circumstances, it would be unreasonable for the secured creditor to comply with the request.
 - (6) A secured creditor who is required to respond to the request may charge the debtor the reasonable costs for providing the information.
 - (7) A debtor shall be entitled to receive a reply without charge once every 3 months.
 - (8) If the secured creditor fails to comply with an order of the Court made under subsection (3), the Court may –
 - (a) issue an order –
 - (i) declaring that the security interest to which the request relates is to be treated as unperfected or extinguished; and
 - (ii) directing the Registrar to cancel the registration relating to the security interest; and
 - (b) make such other orders as it thinks proper for the purpose of giving effect to an order under this section.

99. Obligations of parties in possession

- (1) A debtor or secured creditor in possession of collateral shall exercise reasonable care to preserve the asset.
- (2) A secured creditor has the right to inspect the collateral in possession of the debtor or another person.

100. Service of documents

- (1) A document or notification to be served in accordance with this Act shall be considered sufficiently served if:
 - (a) it is delivered to a person or the person's authorised agent as designated in a security agreement;
 - (b) it is left at the person's or the person's agent's usual or last known business or at an address specified for that purpose in a security agreement;
 - (c) it is posted in a letter addressed to the person or the person's agent by name at their place of residence, business or designated address; or
 - (d) it is delivered by facsimile, electronic mail or other similar means of communication.
- (2) Nothing in this section shall affect any provision in this Act relating to the registration of a notice or detract from the power of any court to direct how the service of any document or notice relating to legal proceedings before the court shall be done.

101. Regulations

- (1) The Minister may make such regulations as the Minister considers necessary or expedient for the purpose of carrying out or giving effect to the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1) the Minister may make regulations for or with respect to all or any of the following matters –
 - (a) the procedures, requirements and other matters in respect of the register and its operation, including the form of access to the Collateral Registry;
 - (b) the fees and charges payable in connection with any proceedings or matter or in connection with the provision of any service by the Collateral Registry;
 - (c) the procedures, requirements and other matters in respect of any registration under this Act; and
 - (d) any other matter required to be prescribed by this Act.
- (3) A person who commits an offence pursuant to this Act for which no penalty is specified or provided is liable, on summary conviction, to a fine not exceeding [ten thousand] dollars or to a term of imprisonment not exceeding [five years].

PART IX - REPEAL AND TRANSITIONAL PROVISIONS

102. Overriding effect

In the event of a conflict arising from the provisions of this Act and any other written law or in any regulations made thereunder relating to the exercise of the powers and the performance of the functions of the Registrar under this Act, the provisions of this Act shall prevail.

103. Interpretation of transitional provisions

In this Part –

“existing secured creditor” means a holder of a prior security interest;

“prior law” means any law whether statutory, equitable or common law that applied to prior security interests immediately before the commencement of this Act;

“prior security interest” means an interest created or provided for by an agreement or other transaction that was made or entered into before the commencement of this Act that is a security interest within the meaning of this Act and to which this Act would have applied if it had been in force when the security interest was created.

“prior third party interest” means a third party interest that arose before the commencement of this Act;

“transitional period” means the period of [] months commencing on the commencement of this Act.

104. Prior security interests continue to be enforceable against third parties

- (1) A prior security interest that was perfected under prior law at the time this Act entered into force, continues to be perfected under this Act, until the earlier of:
 - (a) the time it would have ceased to be perfected under prior law; and
 - (b) the expiration of the transitional period.
- (2) If the secured creditor satisfies the requirements for perfection of the security interest under this Act, before the time perfection would have ceased under prior law, the security interest continues to be perfected under this Act from the time when the security interest was originally perfected under the prior law.
- (3) If the secured creditor does not satisfy the requirements for perfection of the security interest under this Act before the time perfection would have ceased under subsection (1), the prior security interest is perfected only from the time it is perfected under this Act.
- (4) A written agreement between a debtor and a secured creditor creating a prior security interest is sufficient to constitute authorization by the debtor for the registration of a notice covering the assets described in that agreement under this Act.
- (5) If a prior security interest referred to in subsection (2) was perfected by the registration of a notice under prior law, the time of registration under prior law is the time to be used for the purposes of applying the priority rules of this Act that refer to the time of registration of a notice of a security interest.

105. Prior proceedings

- (1) Subject to subsection (2), prior law applies to a matter that is the subject of an enforcement or other proceedings before a court or arbitral tribunal commenced before the entry into force of this Act.
- (2) If any step has been taken to enforce a prior security interest before the entry into force of this Act, enforcement may continue under prior law or may proceed under this Act.

106. Priority of third party interests during transitional period

During the transitional period –

- (a) priority between a prior security interest and a prior third party interest shall be determined by the prior law;
- (b) priority between a prior security interest and a third party interest that arose on or after the commencement of this Act shall be determined by this Act; and
- (c) priority between a security interest that is not a prior security interest and a prior third party interest shall be determined by this Act.