

No. 18 of 2011.

*Personal Property Security Act 2011.*

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No. of 2011.

*Personal Property Security Act 2011.*

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No. of 2011.

AN ACT

Entitled

*Personal Property Security Act 2011.*

Being an Act to make provision for the creation, attachment, perfection, prioritisation, and enforcement of security interests in certain property, and to provide for related transactions and other interests necessary to give notice of the status of property to buyers and prospective creditors,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART 1. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely -

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public order.

**2. INTERPRETATION.**

(1) Explanatory text at the outset of Parts and Divisions of this Act are for informational purposes only and do not constitute part of this Act.

(2) In this Act, unless the context requires otherwise -

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

“account” means a monetary obligation that is not evidenced by chattel paper or an instrument, whether or not it has been earned by performance, but does not include a deposit account or an investment property;

“account debtor” means a person who is obligated under an intangible or chattel paper;

“advance” means the payment of money, the provision of credit or the giving of value, and 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 property acquired after the time that a security agreement is concluded that covers the property;

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"as-extracted collateral" means -

- (a) minerals and petroleum that are subject to a security interest that is created by a debtor having an interest in the minerals or petroleum before extraction, and that attaches to the minerals and petroleum as they are extracted; and
- (b) accounts arising out of the sale at the minehead or wellhead of minerals or petroleum in which the debtor had an interest before extraction;

"chattel paper" means one or more writings that evidence both a monetary obligation and -

- (a) a security interest in, or lease of, specific goods; or
- (b) a security interest in, or lease of, specific goods and accessions;

"collateral" means personal property that is subject to a security interest;

"commercial consignment" means a transaction, regardless of the form or terminology used in the agreement, in which a person (the consignor) delivers goods for the purpose of sale to a merchant (the consignee) that deals in goods of that kind under a name other than that of the consignor, but the term excludes a transaction in which -

- (a) goods are delivered to an auctioneer; or
- (b) consumer goods are delivered to a seller;

"consumer goods" means goods that are used or acquired for use primarily for personal, family or household purposes, but the term does not include a serial numbered vehicle;

"creditor" includes an assignee for the benefit of creditors, an executor, an administrator, a committee or a property guardian of a creditor;

"crops" means crops, whether matured or otherwise, and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land, and includes trees only if they -

- (a) are being grown as nursery stock; or
- (b) are being grown for uses other than the production of lumber and wood products; or
- (c) are intended to be replanted in another location for the purpose of reforestation;

"debtor" means -

- (a) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor; or
- (b) a seller of accounts, chattel paper, intangibles, or promissory notes; or
- (c) a consignee under a commercial consignment.

"default" means the failure to pay or otherwise perform the obligation secured when due; or the occurrence of an event that, under the security agreement, gives the secured party the right to enforce the security;

"deposit account" means a demand, time, savings, passbook, or similar account maintained with a financial institution;

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

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

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- (b) in which it is stated that the goods identified in it will be delivered to a named person, or to the transferee of that person, or to the bearer or to the order of a named person;

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

"execution creditor" means -

- (a) a person who causes or may cause personal property or fixtures to be seized under legal process to enforce a judgment or legal obligation, including execution, attachment or garnishment, or who has obtained or may obtain a charging order or equitable execution that affects or relates to the collateral; or
- (b) the holder of a landlord's lien, to the extent that the holder of the lien asserts a right to property that is subject to a security interest; or
- (c) a trustee in bankruptcy; or
- (d) a liquidator;

"fixtures" means goods that have become so related to real property that an interest in them arises under real property law;

"future advance" means -

- (a) 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 signed, whether or not provided or given under an obligation; and
- (b) includes advances, reasonable costs incurred, and expenditures made for the protection, maintenance, preservation, or repair of the collateral, or for the enforcement of the security interest;

"goods" means all things that are movable when a security interest attaches, and includes -

- (a) equipment; and
  - (b) inventory; and
  - (c) farm products; and
  - (d) consumer goods; and
  - (e) fixtures; and
  - (f) standing timber that is to be cut and removed under a conveyance or contract for sale; and
  - (g) minerals and petroleum, but only from the time of extraction; and
  - (h) livestock, including the unborn young of livestock; and
  - (i) crops; and
  - (j) manufactured or demountable homes;
- but the term does not include accounts, deposit accounts, chattel paper, a document of title, an instrument, investment property, or money;

"instrument" means -

- (a) a bill of exchange, note or cheque; or
- (b) any other writing that evidences a right to payment of money and that is of a type that, in the ordinary course of business, is transferred by delivery with any necessary endorsement or assignment; or

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- (c) a letter of credit or an advice of credit, if the letter of credit or advice of credit states on it that it must be surrendered on claiming payment; but does not include -
- (i) chattel paper, a document of title or an investment property; or
  - (ii) a writing that provides for or creates a mortgage or charge with respect to an interest in land that is specifically identified in the writing;

"intangible" means personal property that is not goods, chattel paper, a document of title, an instrument, money or an investment property, and includes an account, a deposit account, an interest in a mortgage or charge with respect to real property, intellectual property, and a licence;

"inventory" means -

- (a) goods held by a person for sale or lease, or that have been leased by that person as lessor; or
- (b) goods to be furnished by or on behalf of a person, or that have been furnished by or on behalf of that person, under a contract of service; or
- (c) raw materials or work in progress; or
- (d) materials used or consumed in a business;

"investment property" means -

- (a) a security;
- (b) a security entitlement;
- (c) a securities account;
- (d) a futures contract; or
- (e) a futures account;

"lease for a term of more than one year" includes -

- (a) a lease for an indefinite term, including a lease for an indefinite term that is determinable by one or both of the parties not later than one year after the day of its execution; and
- (b) a lease initially for a term of one year or less than one year, where the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for a period of more than one year after the day on which the lessee, with the consent of the lessor, first acquired possession of them, but the lease does not become a lease for a term of more than one year until the lessee's possession extends for more than one year; and
- (c) a lease for a term of one year or less where -
  - (i) the lease provides that it is automatically renewable or that it is renewable at the option of one of the parties or by agreement of the parties for one or more terms; and
  - (ii) the total of the terms, including the original term, may exceed one year;

but does not include -

- (d) a lease involving a lessor who is not regularly engaged in the business of leasing goods; or
- (e) a lease of household furnishings or appliances as part of a lease of land where the goods are incidental to the use and enjoyment of the land; or

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- (f) a lease of prescribed goods, regardless of the length of the lease term;
- "licence" means a right, whether or not exclusive -
- (a) to manufacture, produce, sell, transport, or otherwise deal with personal property; or
  - (b) to provide services;
- that is transferrable by the grantee with or without restriction or the consent of the grantor of the license;
- "minerals" means minerals as defined in the *Mining Act 1992*;
- "notice" means (except in the context of a notification to a debtor, secured party, or person other than the registry) a writing registered or presented for registration, and includes an initial notice, amendment, continuation statement, and termination statement;
- "personal property" means goods, chattel paper, investment property, a document of title, an instrument, money or an intangible;
- "petroleum" means petroleum as defined in the *Oil and Gas Act 1998*.
- "proceeds" means -
- (a) identifiable or traceable personal property -
    - (i) that are derived directly or indirectly from any dealing with collateral or the proceeds of collateral; and
    - (ii) in which the debtor acquires an interest;
  - (b) a right to an insurance payment or any other payment as indemnity or compensation for loss of or damage to the collateral or proceeds of the collateral;
  - (c) a payment made in total or partial discharge or redemption of an intangible, chattel paper, an instrument or investment property; or
  - (d) rights arising out of, or property collected on, or distributed on account of, collateral that is investment property;
- but does not include animals merely because they are the offspring of animals that are collateral;
- "purchaser" means a person who takes by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue, gift or any other consensual transaction that creates an interest in personal property;
- "purchase-money security interest" means -
- (a) a security interest taken in collateral, other than investment property, to the extent that it secures all or part of its purchase price; or
  - (b) a security interest taken in collateral, other than investment property, 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; or
  - (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 the lease back to the seller and, for the purposes of this subparagraph, "purchase price" and "value" include credit charges and interest payable for the purchase or loan credit;

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“real property identification number” means the number that identifies real property sufficiently to register a mortgage in the real property under the *Land Registration Act 1981*;

“secured party” means a lender, seller or other person in whose favour a security interest is created or provided for under a security agreement, including a person to whom accounts or chattel paper have been sold, and a consignor or lessor of goods, including the representative of any such person or groups of persons;

“security agreement” means a writing that provides for a security interest;

“security interest” means -

- (a) a legal interest in personal property that secures payment or performance of an obligation, but does not include the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of an agent of the seller, unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods; and
- (b) the interest of -
  - (i) a transferee under a transfer of an account or a transfer of chattel paper; or
  - (ii) a consignor who delivers goods to a consignee under a commercial consignment; or
  - (iii) a lessor under a lease for a term of more than one year; that does not secure payment or performance of an obligation;

“serial number” means the vehicle identification number assigned to a vehicle by its manufacturer under standards adopted by the International Organization for Standardization;

“serial numbered vehicle” means an automobile or truck identifiable by a serial number that is subject to a security interest and held by a debtor primarily for personal use;

“sign” means -

- (a) to physically execute a signature; or
- (b) to execute or otherwise adopt a symbol, or encrypt or similarly process a writing in whole or in part, with the present intent to identify the person and adopt or accept a writing;

“supporting obligation” means a right in a letter of credit or secondary obligation that supports a right to payment or performance of an account, chattel paper, a document of title, an instrument, an intangible, or investment property.

“value” means any consideration that is sufficient to support a contract and includes an antecedent debt or liability;

“writing” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; the term includes a photocopy, facsimile copy, and electronic mail.

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**3. MEANING OF "CONTROL" OF A DEPOSIT ACCOUNT.**

A secured party has control of a deposit account if -

- (a) the secured party is the financial institution with which the deposit account is maintained, even if the debtor retains the right to direct the disposition of funds from the deposit account;
- (b) the debtor, secured party, and financial institution have agreed in a signed writing that the financial institution will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or
- (c) the secured party becomes the financial institution's customer with respect to the deposit account.

**4. MEANING OF "CONTROL" OF INVESTMENT PROPERTY.**

For the purposes of this Act -

- (a) a purchaser has control of a certificated security if the certificated security is delivered to the purchaser, and -
  - (i) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or
  - (ii) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer of the security;
- (b) a purchaser has control of an uncertificated security if -
  - (i) the uncertificated security is delivered to the purchaser; or
  - (ii) the issuer of the security has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner;
- (c) a purchaser has control of a security entitlement if -
  - (i) the purchaser becomes the entitlement holder; or
  - (ii) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or
  - (iii) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges having control on behalf of the purchaser;
- (d) if an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control;
- (e) a purchaser who has satisfied the requirements of Paragraphs (b) or (c) has control even if the registered owner in the case of Paragraph (b) or the entitlement holder in the case of Paragraph (c) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer of the security or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement;

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- (f) an issuer of securities or a securities intermediary may not enter into an agreement of the kind described in Paragraphs (b)(ii) or (c)(ii) without the consent of the registered owner or entitlement holder, but an issuer of securities or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs, and an issuer of securities or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

### **5. MEANING OF "KNOWLEDGE".**

For the purposes of this Act -

- (a) an individual knows or has knowledge when information is acquired by the individual under circumstances in which a reasonable person would take cognizance of it; and
- (b) a partnership knows or has knowledge when information comes to the attention of one of the general partners or a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it; and
- (c) a corporation knows or has knowledge -
- (i) when information comes to the attention of -
    - (A) a managing director or officer of the corporation; or
    - (B) a senior employee of the corporation with responsibility for matters to which the information relates; under circumstances in which a reasonable person would take cognizance of it; or
  - (ii) when information in writing is delivered to the corporation's registered office or attorney for service;
- (d) the members of an association know or have knowledge when information comes to the attention of -
- (i) a managing director or officer of the association; or
  - (ii) a senior employee of the association with responsibility for matters to which the information relates; or
  - (iii) all members under circumstances in which a reasonable person would take cognizance of it; and
- (e) a government knows or has knowledge when information comes to the attention of a senior employee of the government with responsibility for matters to which the information relates, under circumstances in which a reasonable person would take cognizance of it.

### **6. DESCRIPTION OF COLLATERAL IN A SECURITY AGREEMENT OR NOTICE.**

- (1) A description of collateral in a security agreement or notice is sufficient if it -
- (a) describes collateral in a manner that enables the collateral to be identified; or
  - (b) consists of a statement that a security interest is taken in all of the debtor's present and after-acquired property; or

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- (c) consists of a statement that a security interest is taken in all of the debtor's present and after-acquired property except for specified items or kinds of personal property.

(2) A collateral description may provide the serial number of a serial-numbered vehicle in a field prescribed by the registrar.

(3) A notice may provide the relevant real property identification number if the notice covers fixtures, timber to be cut, or as-extracted collateral, in a field prescribed by the registrar.

### **7. DETERMINATION OF CLASSIFICATION OF GOODS.**

Unless otherwise provided in this Act, the determination of whether goods are consumer goods, inventory or equipment is to be made as of the time when the security interest in the goods attaches.

### **8. PROCEEDS TRACEABLE REGARDLESS OF FIDUCIARY RELATIONSHIP.**

Proceeds are traceable whether or not there is a fiduciary relationship between the person who has a security interest in the proceeds, as provided in Section 14, and the person who has rights in or has dealt with the proceeds.

### **9. TIME OF POSSESSION OF CERTAIN SECURITIES.**

Where collateral is a security the transfer of which may be effected by an entry in the records of a clearing agency under any law relating to the transfer of an interest in a security, the transferee or secured party is deemed to have taken possession of the security when the appropriate entries have been made in the records of the clearing agency.

## **PART II. – APPLICATION OF THE ACT.**

*The purpose of this Part is to define those transactions that are subject to the Act and those transactions that are excluded from the scope of the Act.*

### **10. TRANSACTIONS THAT ARE SUBJECT TO THIS ACT.**

- (1) This Act applies -
  - (a) to every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral; and
  - (b) without limiting the generality of Paragraph (a), to a chattel mortgage, conditional sale, floating charge, pledge, trust indenture, trust receipt, or to an assignment, consignment, lease, trust or transfer of chattel paper that secures payment or performance of an obligation; and
  - (c) without limiting the generality of Paragraph (a), to a security interest granted by a person to a financial institution in a deposit account maintained by the financial institution.

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- (2) Except as provided in Section 95(1), this Act applies -
- (a) to a transfer of an account or chattel paper, to a lease for a term of more than one year and to a commercial consignment that does not secure payment or performance of an obligation; and
  - (b) to the interest of an execution creditor.

### **11. TRANSACTIONS THAT ARE NOT SUBJECT TO THIS ACT.**

- (1) Except as otherwise provided in this Act, this Act does not apply to -
- (a) the creation or transfer of an interest in present or future wages, salary, pay, commission or any other compensation for labour or personal services, other than fees for professional services;
  - (b) a transfer of an unearned right to payment under a contract to a transferee who is to perform the transferor's obligations under the contract;
  - (c) the creation or transfer of an interest in real property including a lease of real property, other than an interest in crops, fixtures, timber to be cut, or as-extracted collateral;
  - (d) a sale of accounts or chattel paper as part of a sale of a business out of which they arose, unless the seller remains in apparent control of the business after the sale;
  - (e) a transfer of accounts that is made solely to facilitate the collection of accounts for the transferor;
  - (f) an assignment for the general benefit of creditors;
  - (g) a transfer of an interest in a superannuation fund;
  - (h) the creation or transfer of an interest in a tenement governed by the *Mining Act 1992*;
  - (i) the creation or transfer of an interest in a licence governed by the *Oil and Gas Act 1998*;
  - (j) a right of recoupment or set off, except as provided in Section 66.

(2) The application of this Act to a security interest in an intangible is not affected by the fact that the intangible is secured by a transaction or interest to which this Act does not apply.

### **12. ACT BINDS THE STATE.**

This Act binds the State.

### **PART III. – SECURITY AGREEMENTS, ATTACHMENT OF SECURITY INTERESTS, AND SECURED OBLIGATIONS.**

*The purpose of this Part is to assure the effectiveness of security agreements between the parties and against others as well. The Part establishes the conditions for the attachment of security interests to collateral under security agreements. The Part frees the debtor and secured party to agree that obligations may be secured by collateral acquired by the debtor in the future, and that collateral may secure an obligation of the secured party to make advances of funds in the future.*

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**13. EFFECTIVENESS OF SECURITY AGREEMENT AND SECURITY INTEREST.**

(1) Except as otherwise provided in this or any other Act, a security agreement is effective -

- (a) according to its terms; and
- (b) against purchasers of the collateral; and
- (c) against execution creditors.

(2) A security interest is not invalid or fraudulent against creditors and other third parties because -

- (a) the debtor has the right or ability -
  - (i) to use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods; or
  - (ii) to collect, compromise, enforce, or otherwise deal with collateral; or
  - (iii) to accept the return of collateral or make repossessions; or
  - (iv) to use, commingle, or dispose of proceeds; or
- (b) the secured party fails to require the debtor to account for proceeds or replace collateral.

**14. ATTACHMENT OF SECURITY INTEREST TO COLLATERAL AND PROCEEDS.**

(1) A security interest attaches to collateral and is enforceable against the debtor and third parties as provided in this Act, when -

- (a) value is given;
- (b) the debtor has rights in the collateral or power to transfer rights in the collateral to a secured party; and
- (c) one of the following conditions is met -
  - (i) the debtor has signed a security agreement that provides a description of the collateral; or
  - (ii) the collateral is in the possession of the secured party and is of a type that may be perfected by possession; or
  - (iii) the collateral is in the control of the secured party and is of a type that may be perfected by control.

(2) For the purposes of Subsection (1)(b) and without limiting other rights that the debtor may have in the collateral, a lessee under a lease for a term of more than one year or a consignee under a commercial consignment has rights in the goods when the lessee or consignee obtains possession of them under the lease or consignment.

(3) For the purposes of Subsection (1)(b), a debtor has rights in timber to be cut when the timber is cut, and in as-extracted collateral at the time that the collateral subject to the security interest are extracted.

(4) Unless otherwise agreed by the debtor and secured party, the attachment of a security interest in -

- (a) collateral gives the secured party the right to proceeds of the collateral, even if the security agreement is silent about proceeds; and

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- (b) collateral is also attachment of a security interest in a supporting obligation for the collateral; and
- (c) a right to payment or performance secured by a security interest in personal property is also attachment of a security interest in the personal property; and
- (d) a right to payment or performance secured by a security interest in a mortgage in real property is also attachment of a security interest to the mortgage; and
- (e) a securities account is also attachment of a security interest in the security entitlements carried in the securities account; and
- (f) a futures account is also attachment of a security interest in the futures contracts carried in the futures account.

### **15. OBLIGATIONS SECURED BY AFTER-ACQUIRED PROPERTY.**

Where a security agreement provides for a security interest in after-acquired property, the security interest attaches without specific appropriation by the debtor.

### **16. OBLIGATIONS TO MAKE FUTURE ADVANCES.**

A security agreement may provide –

- (a) that collateral secures; or
- (b) that accounts, chattel paper, or promissory notes are sold in connection with; future advances or other value, whether or not the advances or value are given under commitment.

## **PART IV. – RIGHTS AND DUTIES OF THE DEBTOR AND THE SECURED PARTY.**

*This Part provides for the rights and duties of the debtor and secured party when (1) the secured party has possession of collateral, (2) when the secured party controls investment property or deposit accounts, and (3) when the secured party takes an assignment of an account. The Part provides that the secured party must periodically provide, upon request of the debtor, a statement of account.*

### **17. SECURED PARTY'S DUTY TO PRESERVE COLLATERAL.**

(1) A secured party shall use reasonable care in the custody and preservation of collateral in the possession of the secured party and, unless the parties agree otherwise, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against other persons.

(2) Unless the parties agree otherwise, where collateral is in the secured party's possession -

- (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in obtaining and maintaining possession of the collateral, are chargeable to the debtor and are secured by the collateral; and

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- (b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage.
- (3) Unless the parties agree otherwise, the secured party -
  - (a) may hold as additional security any increase or profits received from the collateral, except money; and
  - (b) may create a security interest in the collateral; and
  - (c) shall either apply money or funds received from the collateral to reduce the secured obligation or remit such money or funds to the debtor; and
  - (d) shall keep the collateral identifiable, but fungible collateral may be commingled.
- (4) Subject to Subsection (1), a secured party may use the collateral -
  - (a) in the manner and to the extent provided in the security agreement; or
  - (b) for the purpose of preserving the collateral or its value; or
  - (c) under an order of the court.

#### **18. RIGHTS AND DUTIES OF SECURED PARTY IN CONTROL OF INVESTMENT PROPERTY.**

(1) Unless otherwise agreed by the parties and notwithstanding Section 17, a secured party having control of investment property as collateral -

- (a) may hold as additional security any proceeds received from the collateral; and
- (b) may create a security interest in the collateral; and
- (c) shall either apply money or funds received from the collateral to reduce the secured obligation or remit such money or funds to the debtor.

(2) Notwithstanding Subsection (1) and Section 17, a secured party having control of investment property as collateral may sell, transfer, use or otherwise deal with the collateral in the manner and to the extent provided in the security agreement.

(3) Within 14 days after receiving a demand in the form of a signed writing by the debtor, a secured party having control of investment property shall send to an interested intermediary a signed writing that releases the intermediary from any further obligation to comply with orders or directions originated by the secured party.

- (4) Subsection (3) applies only if -
  - (a) there is no outstanding secured obligation; and
  - (b) the secured party is not committed to make advances, incur obligations, or otherwise give value.

#### **19. DUTIES OF SECURED PARTY IN CONTROL OF DEPOSIT ACCOUNT.**

- (1) This section applies if -
  - (a) there is no outstanding secured obligation; and
  - (b) the secured party is not committed to make advances, incur obligations, or otherwise give value.

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(2) Within 14 days after receiving a demand in the form of a signed writing by the debtor, a secured party that has control of a deposit account other than a secured party that is the financial institution with which a deposit account is maintained shall send to the financial institution with which the deposit account is maintained a signed writing that releases the financial institution from any further obligation to comply with instructions originated by the secured party.

(3) Within 14 days after receiving a demand in the form of a signed writing by the debtor, a secured party that has control of a deposit account and that is the financial institution with which a deposit account is maintained shall -

- (a) pay the debtor the balance on deposit in the deposit account; or
- (b) transfer the balance on deposit into a deposit account in the debtor's name.

### **20. DUTIES OF SECURED PARTY IF ACCOUNT DEBTOR IS NOTIFIED OF ASSIGNMENT.**

- (1) Except as otherwise provided in Subsection (3), this section applies if -
- (a) there is no outstanding secured obligation; and
  - (b) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(2) Within 14 days after receiving a demand in the form of a signed writing by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party (as assignee) a signed writing that releases the account debtor from any further obligation to the secured party.

- (3) This section does not apply to a sale of an account or chattel paper.

### **21. DEBTOR'S REQUEST FOR ACCOUNTING OR STATEMENT OF ACCOUNT.**

- (1) In this section -
- (a) "request" means a writing of a type described in Paragraph (b), (c), or (d);
  - (b) "request for an accounting" means a writing signed by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.
  - (c) "request regarding a list of collateral" means a writing signed by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request;
  - (d) "request regarding a statement of account" means a writing signed by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

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(2) Subject to Subsections (3), (4), (5), and (6), a secured party, other than a buyer of accounts, chattel paper, or promissory notes, or a consignor, shall comply with a request within 14 days after receipt -

- (a) in the case of a request for an accounting, by signing and sending to the debtor an accounting; and
- (b) in the case of a request regarding a list of collateral or a request regarding a statement of account, by signing and sending to the debtor an approval or correction.

(3) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor a signed writing including a statement to that effect within 14 days after receipt.

(4) A person that -

- (a) receives a request regarding a list of collateral; and
- (b) claims no interest in the collateral when it receives the request; and
- (c) claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor a signed writing disclaiming any interest in the collateral and providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral, if such a person is known.

(5) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor a signed writing -

- (a) disclaiming any interest in the obligations; and
- (b) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(6) A debtor who makes a request is entitled to a response without charge if no response to an earlier request has been provided without charge in the 6 months prior to the request.

### **22. ACCELERATION OF PAYMENT OR PERFORMANCE.**

Where a security agreement provides that the secured party may accelerate payment or performance by the debtor when -

- (a) the secured party considers that the collateral is in jeopardy; or
- (b) the secured party considers that a secured obligation is insecure,

the provision is to be construed to mean that the secured party has the right to do so only if the secured party believes, and has commercially reasonable grounds to believe, that the collateral is or is about to be placed in jeopardy or that the prospect of payment or performance is or is about to be impaired.

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**PART V. – PERFECTION OF SECURITY INTERESTS.**

*This Part provides for the methods by and circumstances under which security interests are perfected. This enables the secured party to enforce the security interest against third parties, such as certain buyers of collateral and certain other creditors.*

**23. PERFECTION OF SECURITY INTEREST.**

A security interest is perfected when it has attached and a method of perfection authorised under this Act has been completed, regardless of the order of occurrence.

**24. PERFECTION BY REGISTRATION OF A NOTICE.**

Subject to Section 23, registration of a notice perfects a security interest in collateral other than money, except that registration of a notice perfects a security interest in money that is proceeds.

**25. PERFECTION BY TAKING POSSESSION OF COLLATERAL.**

(1) Subject to Section 23, possession of the collateral by the secured party or by another person on the secured party's behalf, perfects a security interest in -

- (a) chattel paper; and
- (b) goods; and
- (c) an instrument; and
- (d) a security; and
- (e) a negotiable document of title; and
- (f) money,

except where possession is a result of seizure or repossession.

(2) For the purposes of Subsection (1), a secured party does not have possession of collateral that is in the actual or apparent possession or control of the debtor or the debtor's agent.

(3) Subject to Section 23, a secured party may perfect a security interest in a certificated security by taking delivery of the certificated security, and the security interest remains perfected by delivery until the debtor obtains possession of the security certificate.

**26. PERFECTION BY CONTROL OF DEPOSIT ACCOUNTS AND INVESTMENT PROPERTY.**

(1) Subject to Section 23 -

- (a) a security interest in a deposit account may be perfected by control of the deposit account; and
- (b) a security interest in investment property may be perfected by control of the investment property.

(2) A security interest in investment property is perfected by control from the time the secured party obtains control and remains perfected by control until -

- (a) the secured party does not have control; and

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- (b) one of the following occurs -
  - (i) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate; or
  - (ii) if the collateral is an uncertificated security, the issuer of the security has registered or registers the debtor as the registered owner; or
  - (iii) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

### **27. CONTINUITY OF PERFECTION.**

(1) If a security interest is originally perfected under this Act and is again perfected in some other way under this Act without an intermediate period when it is unperfected, the security interest is continuously perfected for the purposes of this Act.

(2) A transferee of a security interest has the same priority with respect to perfection of the security interest as the transferor had at the time of the transfer.

### **28. TEMPORARY PERFECTION.**

(1) A security interest perfected by possession remains perfected, notwithstanding Section 27, for 7 days after the collateral comes under the control of the debtor, where the collateral is -

- (a) an instrument or a certificated security that a secured party delivers to the debtor for the purpose of -
  - (i) ultimate sale or exchange; or
  - (ii) presentation, collection or renewal; or
  - (iii) registration of a transfer; or
- (b) a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of -
  - (i) ultimate sale or exchange; or
  - (ii) loading, unloading, storing, shipping or transshipping; or
  - (iii) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange.

(2) After the expiration of the 7-day period, the security interest is subject to the provisions of this Act relating to the perfection of a security interest.

### **29. PERFECTION OF SECURITY INTEREST IN GOODS HELD BY BAILEE.**

(1) Subject to Section 23, a security interest in goods in the possession of a bailee is perfected by -

- (a) the issuance of a document of title by the bailee in the name of the secured party; or
- (b) the perfection of a security interest in a negotiable document of title to the goods where the bailee has issued one; or
- (c) a holding on behalf of the secured party under Section 25; or
- (d) the registration of a notice relating to the goods.

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(2) The issuance of a negotiable document of title covering goods does not preclude any other security interest in the goods from arising during the period that the negotiable document of title is outstanding.

(3) A perfected security interest in a negotiable document of title covering goods takes priority over a security interest in the goods otherwise perfected after the goods become covered by the negotiable document of title.

### **30. PERFECTION OF SECURITY INTEREST IN PROCEEDS.**

(1) Except as provided otherwise in this Act, where collateral is dealt with or otherwise gives rise to proceeds, the security interest -

- (a) continues in the collateral unless the secured party expressly or impliedly authorises the dealing; and
- (b) extends to the proceeds.

(2) A security interest in proceeds is a continuously perfected security interest if the interest in the original collateral is perfected by registration of a notice that -

- (a) contains a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind; or
- (b) covers the original collateral, if the proceeds are of a kind that are within the description of the original collateral; or
- (c) covers the original collateral, if the proceeds consist of money, cheques or deposit accounts in financial institutions.

(3) Where the security interest in the original collateral is perfected in a manner other than a manner described in Subsection (2), the security interest in the proceeds is a continuously perfected security interest, but becomes unperfected on the expiration of 14 days after the security interest in the original collateral attaches to the proceeds unless the security interest in the proceeds is otherwise perfected by any of the methods and under the circumstances specified in this Act for original collateral of the same kind.

### **31. PERFECTION OF SECURITY INTERESTS IN SUPPORTING OBLIGATIONS AND OTHER PROPERTY RIGHTS.**

(1) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation or other guarantee that supports the collateral.

(2) Perfection of a security interest in a right to payment or performance also perfects a security interest -

- (a) in a security interest in collateral that supports the right to payment or performance; and
- (b) in a mortgage on real property securing the right to payment or performance.

(3) Registration of a notice is not required to perfect a security interest in a supporting obligation or other property right under Subsections (1) and (2).

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**32. PERFECTION OF SECURITY INTEREST IN GOODS RETURNED OR REPOSSESSED.**

(1) Where a debtor sells or leases goods that are subject to a security interest under circumstances in which the buyer or lessee takes the goods free of the security interest, the security interest reattaches to the goods if –

- (a) the goods are returned to, seized or repossessed by the debtor or by a transferee of chattel paper created by the sale or lease; and
- (b) the obligation secured remains unpaid or unperformed.

(2) Where a security interest reattaches under Subsection (1), the perfection of the security interest and the time of registration or perfection are determined as if the goods had not been sold or leased, if –

- (a) the security interest was perfected by registration at the time of the sale or lease; and
- (b) the registration is effective at the time of the return, seizure or repossession.

(3) Where a sale or lease of goods creates an account or chattel paper, and –

- (a) the account or chattel paper is transferred to a secured party; and
- (b) the goods are returned to, seized or repossessed by the debtor or by the transferee of the chattel paper,

the transferee of the account or chattel paper has a security interest in the goods that attaches when the goods are returned, seized or repossessed.

(4) Notwithstanding Section 25(1), a security interest in goods that arises under Subsection (3) is perfected if the security interest in the account or chattel paper was perfected at the time of the return, seizure or repossession, but becomes unperfected on the expiry of 14 days after the return, seizure or repossession unless the transferee registers a notice relating to the security interest or takes possession of the goods by seizure, repossession or otherwise before the expiration of that period.

(5) A security interest in goods that a transferee of an account has under Subsection (3) is subordinate to a perfected security interest arising under Subsection (1) and to a security interest of a transferee of chattel paper arising under Subsection (3).

(6) A security interest in goods that a transferee of chattel paper has under Subsection (3) has priority over –

- (a) a security interest in goods that reattaches under Subsection (1); and
- (b) a security interest in goods as after-acquired property that attaches on the return, seizure or repossession of the goods,

if the transferee of the chattel paper would have priority under Section 59 as to the chattel paper over an interest in the chattel paper claimed by the holder of the security interest in the goods.

(7) A security interest in goods given by a buyer or lessee of the goods mentioned in Subsection (1) that attaches while the goods are in the possession of the buyer, lessee or debtor and that is perfected when the goods are returned, seized or repossessed has priority over a security interest in the goods arising under this section.

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**PART VI. – PRIORITY OF SECURITY INTERESTS AND RIGHTS OF THIRD PARTIES.**

*This Part provides for the resolution of disputes between secured parties whose interests in collateral come into conflict with the interests of other creditors, and with the interests of buyers of collateral. The Part provides general priority rules for resolving disputes, but takes into account that special types of collateral and special commercial circumstances warrant exceptions to general rules.*

**Division 1. – General Priority Rules.**

**33. GENERAL PRIORITY RULES.**

(1) Unless this Act provides otherwise, the general rules in this section apply to conflicting security interests.

(2) Priority between conflicting perfected security interests in the same collateral is determined by the earliest of the following occurrences -

- (a) the registration of a notice that describes the collateral, without regard to the date of attachment of a security interest; or
- (b) perfection of the security interest.

(3) A perfected security interest has priority over an unperfected security interest.

(4) Priority between conflicting unperfected security interests is determined by the order of attachment of the security interests.

**34. TIME OF PRIORITY OF SECURITY INTERESTS IN PROCEEDS.**

Subject to Section 30 and for the purposes of Section 33, the time of registration or perfection of a security interest in original collateral is also the time of registration or perfection of the security interest in its proceeds.

**35. PRIORITY OF EXECUTION CREDITOR.**

A security interest in collateral is subordinate to the interest of an execution creditor if the security interest is not perfected at the time that a notice of the interest of the execution creditor is registered.

**36. PRIORITY IN FUTURE ADVANCES AND THE INTERESTS OF EXECUTION CREDITORS.**

(1) Subject to Subsection (2), the time of priority that a security interest has under Section 33 applies to all advances, including future advances.

(2) A perfected security interest has priority over the interests of an execution creditor only to the extent of advances made -

- (a) before the secured party acquired knowledge of the interest of the execution creditor; or
- (b) before a notice of the interest of the execution creditor is registered.

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**37. PRIORITY IN FUTURE ADVANCES AND THE INTERESTS OF TRANSFEREES OF THE DEBTOR.**

(1) Where a debtor transfers rights in collateral that, at the time of the transfer, is subject to a perfected security interest, that security interest has priority over any other security interest granted by the transferee before the transfer.

(2) The priority established in Subsection (1) does not apply to the extent that the security interest granted by the transferee secures advances made or contracted for –

- (a) more than 7 days from the day on which the secured party who holds the security interest in the transferred collateral has information required to register an amendment to a notice naming the transferee as the new debtor; and
- (b) before the secured party mentioned in Paragraph (a) amends the notice to disclose the name of the transferee as the new debtor or takes possession of the collateral.

(3) This section does not apply to a transaction in which the transferee acquires the debtor's interest free from the security interest granted by the debtor.

**38. AGREEMENT TO SUBORDINATE PRIORITY.**

(1) A secured party may, in a security agreement or otherwise, subordinate the secured party's security interest to any other interest.

(2) An agreement to subordinate a security interest is effective according to its terms between the parties and may be enforced by a third party if the third party is the person, or one of a class of persons, for whose benefit the agreement is intended.

(3) A security interest is not created only by an agreement or undertaking to postpone or subordinate the following -

- (a) the right of a person to performance of all or any part of an obligation to the right of another person to the performance of all or any part of another obligation of the same debtor; or
- (b) all or any part of the rights of a secured party under a security agreement to all or any part of the rights of another secured party under another security agreement with the same debtor.

*Division 2. – Priority of Purchase-Money Security Interests.*

**39. MEANING OF "POSSESSION" IN THIS DIVISION.**

For the purposes of this division, where goods are shipped by common carrier to a debtor or to a person designated by the debtor, the debtor does not obtain possession of the goods until the debtor or a third party at the request of the debtor obtains actual possession of the goods or a document of title to the goods, whichever is earlier.

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### **40. STATUS OF PURCHASE-MONEY SECURITY INTEREST.**

In a transaction other than a consumer-goods transaction, a purchase-money security interest remains a purchase-money security interest even if -

- (a) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;
- (b) collateral that is not purchase-money collateral also secures the purchase-money obligation; or
- (c) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

### **41. GENERAL RULES ON PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS.**

A perfected purchase-money security interest in goods other than inventory that is perfected when the debtor receives possession of the collateral or within 7 days thereafter has priority over -

- (a) a conflicting security interest in the same goods; and
- (b) except as otherwise provided in Section 65, a perfected security interest in proceeds.

### **42. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS IN INVENTORY.**

(1) Subject to Subsection (2) and except as otherwise provided in Section 43, a perfected purchase-money security interest in inventory has priority -

- (a) over a conflicting security interest in the same inventory; and
- (b) over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory; and
- (c) over a conflicting security interest in proceeds of the chattel paper, if so provided in Section 59; and
- (d) except as otherwise provided in Section 65, in cash proceeds of the inventory to the extent the cash proceeds are received on or before the delivery of the inventory to a buyer, if -
  - (i) the purchase-money security interest is perfected when the debtor receives possession of the inventory; and
  - (ii) the purchase-money secured party sends notification to the holder of the conflicting security interest in the form of a signed writing; and
  - (iii) the holder of the conflicting security interest receives the notification before the debtor receives possession of the inventory; and
  - (iv) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(2) Subsection (1)(d)(ii) through (iv), apply only if the holder of the conflicting security interest had filed a notice covering the same types of inventory -

- (a) if the purchase-money security interest is perfected by registration, before the date of the registration; or

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- (b) if the purchase-money security interest is temporarily perfected, before the beginning of the period of temporary perfection.

### **43. CONFLICTING PURCHASE-MONEY SECURITY INTERESTS.**

If more than one security interest qualifies for priority in the same collateral under this Part -

- (a) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
- (b) in all other cases, Section 33, applies to the conflicting purchase-money security interests.

### **44. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS AGAINST EXECUTION CREDITORS.**

Notwithstanding Section 35, a purchase-money security interest has priority over the interest of an execution creditor in -

- (a) collateral, other than an intangible, if the purchase-money security interest is perfected not later than 7 days after the day on which -
  - (i) the debtor obtains possession of the collateral; or
  - (ii) another person, at the request of the debtor, obtains possession of the collateral; whichever is earlier; or
- (b) an intangible, if the purchase-money security interest is perfected not later than 7 days from the day on which the security interest attaches.

## *Division 3. – Buyers and Other Transferees of Collateral.*

### **45. SPECIAL TERMS USED IN THIS DIVISION.**

For the purposes of this division -

- (a) “buyer or lessee of goods” includes a person who obtains rights in goods under a contract in which the goods become a fixture or an accession to property in which the person has an interest; and
- (b) “ordinary course of business of the seller or lessor” includes the supply of goods in the ordinary course of business as part of a contract for services and materials; and
- (c) “seller or lessor” includes a person who supplies goods that become a fixture or an accession under a contract with a buyer or lessee of goods or with a person who is party to a contract with a buyer or lessee of goods; and
- (d) a sale or lease may be -
  - (i) for cash; or
  - (ii) by exchange for other property; or
  - (iii) on credit,and includes delivering goods or a document of title under a pre-existing contract for sale but does not include a transfer as security for, or in total or partial satisfaction of, a money debt or past liability.

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### **46. WHEN TRANSFEREE TAKES COLLATERAL FREE OF A SECURITY INTEREST.**

(1) Subject to Subsections (2) and (3) and except as provided otherwise in this Part, a transferee of collateral takes collateral free of a security interest if the transferee gives value for the collateral under a transaction that is not a security agreement -

- (a) without knowledge of the security interest; and
- (b) without knowledge that the transaction violates the terms of the security agreement that creates or provides for the security interest; and
- (c) before the security interest is perfected.

(2) Except as provided otherwise in this Part, a transferee of tangible collateral takes the tangible collateral free of a security interest if the transferee -

- (a) takes possession of the tangible collateral before the security interest is perfected; and
- (b) gives value for the collateral -
  - (i) without knowledge of the security interest; and
  - (ii) without knowledge that the transaction violates the terms of the security agreement that creates or provides for the security interest; and
  - (iii) before the security interest is perfected.

(3) For the purposes of Subsection (1), a purchaser of an instrument or investment property, or the holder of negotiable document of title who purchased in the ordinary course of the transferor's business has knowledge of the security interest only if the purchaser or holder -

- (a) acquired the interest with knowledge of the existence of a prior security interest; and
- (b) with knowledge that the transaction violates the terms of the security agreement creating or providing for that interest.

### **47. BUYER OR LESSEE IN THE ORDINARY COURSE OF BUSINESS.**

A buyer or lessee of goods that are sold or leased in the ordinary course of business of the seller or lessor takes the goods free of any perfected or unperfected security interest that is given by the seller or lessor or that arises under Section 30 or 32, whether or not the buyer or lessee knows of it, unless the buyer or lessee also knows that the sale or lease constitutes a breach of the security agreement under which the security interest was created.

### **48. BUYER OR LESSEE OF CONSUMER GOODS.**

(1) A buyer or lessee of goods that are acquired as consumer goods or goods bought for farming uses takes the goods free of a perfected or unperfected security interest if the buyer or lessee -

- (a) gave value for the interest acquired; and
- (b) bought or leased the goods without knowledge of the security interest.

(2) Subsection (1) does not apply to a security interest in -

- (a) consumer goods that are, or are to become, fixtures; or

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- (b) goods the purchase price of which exceeds K5,000 or, in the case of a lease, the market value of which exceeds K5,000.

### **49. BUYER OR LESSEE OF GOODS SUBJECT TO TEMPORARILY PERFECTED SECURITY INTERESTS OR WHICH ARE RETURNED.**

A buyer or lessee of goods takes the goods free of a security interest that is temporarily perfected under Sections 28(1), 30(3), or 32(4), or continuously perfected under Section 37(2), during any of the periods provided in those subsections, if the buyer or lessee -

- (a) gave value for the interest acquired; and
- (b) bought or leased the goods without knowledge of the security interest.

### **50. BUYER OR LESSEE OF SERIAL NUMBERED VEHICLES.**

Where a serial numbered vehicle is sold or leased, the buyer or lessee takes the serial numbered vehicle free from a security interest that is perfected by registration if -

- (a) the buyer or lessee bought or leased the serial numbered vehicle without knowledge of the security interest; and
- (b) the serial numbered vehicle was not described, or was inaccurately described by serial number, in a field prescribed by the registrar, on a notice relating to the security interest.

### **51. BUYER OR LESSEE OF MINERALS, PETROLEUM, AND TIMBER.**

A buyer or lessee in ordinary course of business of the seller or lessor takes the following goods free of an interest arising out of an encumbrance on real property -

- (a) minerals or petroleum at the minehead or wellhead, or upon extraction; and
- (b) timber, as the timber is cut.

### **52. BUYER, LESSEE OR MORTGAGEE OF FIXTURES.**

A buyer, lessee, or mortgagee of fixtures takes the fixtures free of a security interest perfected by registration under this Act if -

- (a) the buyer, lessee, or mortgagee takes the fixtures without knowledge of the security interest; and
- (b) the notice describing the fixtures does not correctly identify the related real property by its real property identification number.

### **53. PRIORITY WHERE LIENS ARISE UPON FURNISHING OF MATERIALS OR SERVICES.**

Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, a lien that the person has with respect to those materials or services has priority over a perfected security interest while the goods are in the person's possession, unless the lien is given by an Act that provides that the lien does not have the priority.

### **54. RIGHTS OF DEBTOR TO TRANSFER INTERESTS IN COLLATERAL.**

(1) In this section, "transfer" includes a sale, the creation of a security interest and a transfer under judgment enforcement proceedings.

(2) The rights of a debtor in collateral may be transferred consensually or by operation of law notwithstanding a provision in the security agreement that prohibits transfer or declares a transfer to be a default.

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(3) Notwithstanding Subsection (2), a transfer by the debtor does not prejudice the rights of the secured party under the security agreement or otherwise, including the right to treat a prohibited transfer as an act of default.

### *Division 4. – Persons to Whom Negotiable Collateral is Transferred.*

#### **55. PRIORITY OF HOLDER OF MONEY THAT IS PROCEEDS.**

A person other than the debtor who holds money that is proceeds has priority over a security interest in the money perfected by registration or temporarily perfected under Section 30(3) if the holder -

- (a) acquires the money without knowledge that it is subject to a security interest; or
- (b) is a holder for value, whether or not the holder acquires the money without knowledge that it is subject to a security interest.

#### **56. PRIORITY OF CREDITORS WHO RECEIVE FUNDS SUBJECT TO A SECURITY INTEREST.**

(1) In this subsection, “debtor-initiated payment” means a payment made by the debtor through the use of -

- (a) an instrument;
- (b) an electronic funds transfer; or
- (c) a debit, a transfer order, an authorisation or a similar written payment mechanism executed by the debtor when the payment is made.

(2) A creditor who receives payment of a debt owing by a debtor through a debtor-initiated payment has priority, whether or not the creditor has knowledge of the security interest at the time of the payment, over a security interest in -

- (a) the funds paid; and
- (b) the intangible that was the source of the payment; and
- (c) any instrument used to effect the payment.

#### **57. PRIORITY OF PURCHASERS OF INSTRUMENTS OR SECURITIES.**

(1) A purchaser of an instrument or a security has priority over any security interest in the instrument or security perfected by registration or temporarily perfected if the purchaser -

- (a) gave value for the instrument or security; and
- (b) acquired the instrument or security without knowledge that it is subject to a security interest; and
- (c) took possession of the instrument or security.

(2) For the purposes of this section, a purchaser of an instrument or a security who acquired it in the ordinary course of the transferor’s business has knowledge only if the purchaser acquired the interest with knowledge that the transaction violates the terms of the security agreement that creates or provides for the security interest.

(3) For the purposes of this section, a purchaser includes a person who acquires an instrument or a security by compulsory acquisition or scheme of arrangement.

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### **58. PRIORITY OF HOLDERS OF NEGOTIABLE DOCUMENTS OF TITLE.**

(1) A holder to whom a negotiable document of title is negotiated has priority over a security interest in the document of title that is perfected by registration or temporarily perfected if the holder -

- (a) gave value for the document of title; and
- (b) acquired the document of title without knowledge that it is subject to a security interest.

(2) For the purposes of this section, a holder of a negotiable document of title who acquired it under a transaction entered into in the ordinary course of the transferor's business has knowledge only if the purchaser acquired the interest with knowledge that the transaction violates the terms of the security agreement that creates or provides for the security interest.

### **59. PRIORITY OF PURCHASERS OF CHATTEL PAPER.**

A purchaser of chattel paper who takes possession of it in the ordinary course of the purchaser's business and for new value has priority over any security interest in the chattel paper that -

- (a) was perfected by registration, if the purchaser does not have knowledge at the time of taking possession that the chattel paper is subject to a security interest; or
- (b) has attached to proceeds of inventory under Section 30, whatever the extent of the purchaser's knowledge.

## *Division 5. – Assignments and Other Transfers of Accounts.*

### **60. APPLICABILITY OF THIS DIVISION.**

In this division, "assignee" includes a secured party.

### **61. NOTICE TO ACCOUNT DEBTOR.**

- (1) Notice to an account debtor is not a condition for -
- (a) the attachment or perfection of a security interest in an account; or
  - (b) the assignment or transfer of an account; or
  - (c) the enforcement of a security interest in an account, except as provided in this section.

(2) Where collateral that is an intangible or chattel paper is assigned, the account debtor may make payments under the contract to the assignor -

- (a) before the account debtor receives a notice that -
  - (i) states that the amount payable or to become payable under the contract has been assigned and that payment is to be made to the assignee; and
  - (ii) identifies the contract under which the amount payable is to become payable; or
- (b) after -
  - (i) the account debtor requests the assignee to furnish proof of the assignment; and

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- (ii) the assignee fails to furnish proof within 14 days after the day of the request.

(3) Payment by an account debtor to an assignee under a notice mentioned in Subsection (2)(a) discharges the obligation of the account debtor to the extent of the payment.

### **62. ACCOUNT DEBTOR'S RIGHT TO ASSERT DEFENSES AND CLAIMS.**

Unless the account debtor on an intangible or chattel paper has made an enforceable agreement not to assert defenses to claims arising out of a contract, the rights of an assignee of the intangible or chattel paper are subject to -

- (a) the terms of the contract between the account debtor and the assignor and any defense or claim arising from the contract or a closely connected contract; and
- (b) any other defense or claim of the account debtor against the assignor that accrues before the account debtor acquires knowledge of the assignment.

### **63. MODIFIED OR SUBSTITUTED CONTRACTS EFFECTIVE AGAINST ASSIGNEE.**

(1) A modification of or substitution for a contract made in good faith and in accordance with reasonable commercial standards and without material adverse effect on the assignee's rights under the contract or the assignor's ability to perform the contract is effective against the assignee unless the account debtor has otherwise agreed.

- (2) Subsection (1) applies -
  - (a) to the extent that an assigned right to payment arising out of the contract has not been earned by performance; and
  - (b) notwithstanding that there has been notice of the assignment to the account debtor.

(3) Where a contract has been substituted or modified in the manner described in Subsection (1), the assignee obtains rights that correspond to the rights of the assignor under the substituted or modified contract.

(4) Nothing in Subsections (1) to (3) affects the validity of a term in an assignment agreement that provides that a modification or substitution is a breach of contract by the assignor.

### **64. ENFORCEABILITY OF NON-ASSIGNMENT CLAUSES.**

A term in a contract between an assignor and an account debtor, or a debtor on chattel paper, that prohibits or restricts assignment of the whole of the account or chattel paper for money due or to become due -

- (a) is binding on the assignor, but only to the extent of making the assignor liable in damages for breach of contract; and
- (b) is unenforceable against third parties.

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*Division 6. – Priority in Deposit Accounts and Investment Property.*

**65. PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNTS PERFECTED BY CONTROL.**

(1) A security interest held by a secured party having control of the deposit account has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in Subsections (3) and (4), security interests perfected by control rank according to priority in time of obtaining control.

(3) Except as otherwise provided in Subsection (4), a security interest held by the financial institution with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under Section 3(c) has priority over a security interest held by the financial institution with which the deposit account is maintained.

**66. EFFECTIVENESS OF RIGHT OF RECOUPMENT OR SET OFF AGAINST DEPOSIT ACCOUNT.**

(1) Except as otherwise provided in Subsection (3), a financial institution with which a deposit account is maintained may exercise any right of recoupment or set off against a secured party that holds a security interest in the deposit account.

(2) Except as otherwise provided in Subsection (3), the application of this Act to a security interest in a deposit account does not affect a right of recoupment or set off of the secured party as to a deposit account maintained with the secured party.

(3) The exercise by a financial institution of a set off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under Section 3(c), if the set off is based on a claim against the debtor.

**67. PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY.**

(1) A security interest of a secured party having control of investment property has priority over a security interest of a secured party that does not have control of the investment property.

(2) A security interest in a certificated security that is perfected by taking delivery and not by control has priority over a conflicting security interest perfected by a method other than control.

(3) Except as otherwise provided in Subsections (4) and (5), conflicting security interests of secured parties each of which has control rank in priority according to time of obtaining control.

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(4) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest held by a futures intermediary in a futures contract or a futures account maintained with the futures intermediary has priority over a conflicting security interest held by another secured party.

(6) Conflicting security interests granted by a broker, securities intermediary, or futures intermediary that are perfected without control rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by the general priority rules under this Act.

### *Division 7. – Priority in Special Classes of Tangible Collateral.*

#### **68. PRIORITY OF SECURITY INTERESTS IN FIXTURES.**

(1) Subject to Subsection (2), a security interest under this Act may be created in goods that are fixtures or may continue in goods that become fixtures.

(2) A security interest does not exist under this Act in ordinary building materials incorporated into an improvement on real property.

(3) A perfected security interest in fixtures has priority over a claim to the goods made by a person with an interest in the real property if, before the goods become fixtures, the security interest is perfected by any method permitted by this Act and the fixtures are readily removable -

- (a) factory or office machines; or
- (b) equipment that is not primarily used or leased for use in the operation of the real property; or
- (c) replacements of domestic appliances that are consumer goods;

(4) Except as provided in this section with respect to a construction mortgage, a purchase-money security interest in goods that attaches before or at the time when the goods become fixtures has priority with respect to the goods over a claim to the goods made by a person with an interest in the real property.

(5) A security interest in goods that attaches after the goods become fixtures is subordinate to the interest of a person who -

- (a) has an interest in the real property at the time when the goods become fixtures and who -
  - (i) has not consented to the security interest; or
  - (ii) has not disclaimed an interest in the goods or fixtures; or
  - (iii) has not entered into an agreement under which a person is entitled to remove the goods; or
  - (iv) is not otherwise precluded from preventing the debtor from removing the goods; or

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(b) acquires an interest in the real property after the goods become fixtures, if the interest is acquired without fraud and before a notice of the security interest in the goods is registered.

(6) A mortgage is a construction mortgage -

(a) to the extent that it secures an obligation incurred for the construction of an improvement on real property, including the acquisition cost of the real property, if a registered mortgage so indicates; and

(b) to the extent that the mortgage is given to refinance a mortgage described in Paragraph (a).

(7) Notwithstanding Subsection (3), a security interest in fixtures is subordinate to a construction mortgage if the mortgage is registered before the goods become fixtures and the goods become fixtures before the completion of the construction.

(8) Nothing in this Act -

(a) prevents the creation of a mortgage in fixtures under real property law; or

(b) requires a notice of a mortgage in fixtures created under real property law to be registered under this Act to perfect or enforce the right of the mortgagee.

#### **69. SECURED PARTY'S RIGHT TO REMOVE FIXTURES.**

(1) A secured party who, under this Act, has the right to remove goods from real property shall exercise this right of removal in a manner that causes no greater damage or injury to the real property and to other property situated on it or that puts the occupier of the real property to greater inconvenience than is necessarily incidental to the removal of the goods.

(2) A person, other than the debtor, who has an interest in the real property at the time when the goods subject to the security interest are affixed to the real property is entitled to reimbursement for any damages to the interest of the person in the real property caused during the removal of the goods, but is not entitled to reimbursement for reduction in the value of the real property caused by the absence of the goods removed or by the necessity or replacement.

(3) The person entitled to reimbursement under Subsection (2) may refuse permission to remove the goods until the secured party has given adequate security for reimbursement.

#### **70. APPLICATION TO COURT.**

The secured party may apply to a court for one or more of the following -

(a) an order determining the person entitled to reimbursement under Section 69;

(b) an order determining the amount and kind of security to be provided by the secured party;

(c) an order prescribing the depository for the security;

(d) an order authorising the removal of the goods without the provision of security for reimbursement.

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### **71. RETENTION OF FIXTURES BY A PERSON WITH AN INTEREST IN RELATED LAND.**

A person, other than the debtor, who has an interest in the real property that is subordinate to a security interest as provided in this section may, before the goods have been removed from the real property by the secured party, retain the goods on payment to the secured party of the lesser of -

- (a) the amount secured by the security interest that has priority over that interest; and
- (b) the market value of the goods if the goods were removed from the real property.

### **72. PRIORITY OF SECURITY INTERESTS IN CROPS.**

(1) A security interest in crops is a security interest in the crops to be grown, while growing and afterwards when cut or separated from the soil.

(2) For the purpose of determining whether a security interest in crops cut or separated from the soil exists, it does not matter whether the crops are stored on the real property where the crops were grown or on any other land or premises.

(3) A perfected security interest in crops is not extinguished or prejudicially affected by a subsequent sale, lease, mortgage, or other encumbrance of or upon the land on which the crops are growing.

(4) A perfected security interest in crops growing on real property has priority over a conflicting interest of an owner, mortgagee or other person with an interest in the real property if the debtor has a registered interest in or is in possession of the real property.

### **73. PRIORITY OF SECURITY INTERESTS IN ACCESSIONS.**

(1) A security interest may attach to an accession.

(2) A security interest continues in collateral that becomes an accession.

(3) If a security interest in collateral is perfected when the collateral becomes an accession, the security interest remains perfected in the accession.

(4) The priority of a security interest in an accession is determined by the applicable rules of this Part.

(5) Upon default a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(6) A secured party that removes an accession shall promptly reimburse the holder (other than the debtor) of any interest in the whole or the other goods for the cost of repair of any physical injury to the whole.

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(7) A secured party that removes an accession shall promptly reimburse any other secured party for the cost of repair of any damage to the property.

(8) The secured party need not reimburse the debtor or other secured party for any diminution in value caused by the absence of the goods removed or by any necessity for replacing them.

(9) A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

### **74. PRIORITY OF SECURITY INTERESTS IN COMMINGLED GOODS.**

(1) A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass.

(2) Subject to Subsections (4) and (6), where more than one perfected security interest continues in the same product or mass under Subsection (1), and each was a security interest in separate goods, the security interests are entitled to share in the product or mass according to the ratio that the obligation secured by each security interest bears to the sum of the obligations secured by all security interests.

(3) For the purposes of Section 33, perfection of a security interest in goods that subsequently become part of a product or mass shall also be treated as perfection of the interest in the product or mass.

(4) For the purposes of Subsection (2), the obligation secured by a security interest does not exceed the market value of the goods at the day on which the goods become part of the product or mass.

(5) Any priority that a perfected security interest continuing in the product or mass under Subsection (1) has over a perfected security interest in the product or mass is limited to the value of the goods at the day on which they became part of the product or mass.

(6) A perfected purchase-money security interest in goods that continues in the product or mass has priority over -

- (a) a non-purchase-money security interest in the goods that continues in the product or mass under Subsection (1); and
- (b) a non-purchase-money security interest in the product or mass, other than as inventory, given by the same debtor; and
- (c) a non-purchase-money security interest in the product or mass as inventory given by the same debtor if -
  - (i) the secured party with the purchase-money security interest gives a notice to the secured party with the non-purchase-money security interest in the product or mass who registered a notice containing a description of collateral that includes the product or mass before the identity of the goods is lost in the product or mass; and

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- (ii) the notice mentioned in Subparagraph (i) contains a statement that the person giving the notice has acquired or expects to acquire a purchase-money security interest in goods supplied to the debtor as inventory; and
- (iii) the notice mentioned in Subparagraph (i) is given before the identity of the goods is lost in the product or mass.

(7) Where more than one unperfected security interest continues in the same product or mass, each unperfected security interest is entitled to share in the product or mass according to the ratio that the obligation secured by the unperfected security interest bears to the sum of the obligations secured by all unperfected security interests in the same product or mass.

### **75. PRIORITY OF SECURITY INTERESTS IN CERTAIN VESSELS AND AIRCRAFT.**

A security interest under this Act, whether or not it is perfected, is subordinate to a mortgage, charge, lien, or other interest registered -

- (a) with respect to a vessel under the *Merchant Shipping Act* (Chapter 242); or
  - (b) with respect to aircraft under the *Civil Aviation Act 2000*;
- without regard to the time of attachment or perfection of the security interest under this Act, or the time of registration of a notice of the security interest under this Act.

### **PART VII. – REGISTRATION.**

*The purpose of this Part is to establish and provide for the governance of an electronic notice registry. The registry receives notices and maintains them for public search. The notices alert prospective creditors and buyers of collateral of the possible existence of a security interest. The registration date of a notice may establish the date by which priority of competing claims is measured under the previous Part.*

### **76. PERSONAL PROPERTY SECURITY REGISTRY ESTABLISHED.**

- (1) A Personal Property Security Registry is established -
  - (a) to receive, index, store and retrieve notices delivered by secured parties and execution creditors; and
  - (b) to collect authorised fees.
- (2) No person shall have a claim against the registry for errors in registry records committed by a person who registers a notice, or for failure to provide registry services for reasons beyond the control of the registry.
- (3) The duties of the registrar are administrative -
  - (a) by registering a notice or refusing to register a notice, the registrar does not determine the sufficiency, correctness, authenticity, or validity of the notice or any information contained in the notice; and
  - (b) the registering of a notice does not create a security interest in collateral and does not provide evidence that a security interest in collateral exists.

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### **77. REGULATIONS.**

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing matters providing for and in relation to—

- (a) a secure method for registration of notices, including -
  - (i) identification of the person who registers a notice; and
  - (ii) authorisation to amend, continue, or terminate a notice; and
- (b) the method of payment of fees; and
- (c) a fee for registering a notice, not to exceed a reasonable estimate of the cost of maintaining the registry, including a reasonable reserve; and
- (d) a fee for issuing a certified search report, but there shall be no fee for an uncertified search report.

(2) No regulation, business rule or practice shall -

- (a) require a notice to contain information in addition to the requirements of this Act, except as authorised in Subsection 1(a); or
- (b) impose a requirement of categorization or classification, or any restriction on the description of collateral, except as provided for in this Act with respect to a serial number and a real property identification number.

### **78. NOTICE OF THE INTEREST OF AN EXECUTION CREDITOR.**

(1) A notice of the interest of an execution creditor shall include -

- (a) identification of the execution creditor;
- (b) identification of the person owing payment or performance to the execution creditor; and
- (c) a description of property against which the execution creditor claims or may claim a right in the same manner as provided in this Act for registering a notice of a security interest.

(2) A notice shall be registered by the court on behalf of and upon the request of an execution creditor -

- (a) with respect to the holder of a money judgment, at the time the money judgment is entered or at any time thereafter; or
- (b) in the case of a bankruptcy trustee or a liquidator, at the time of the filing of a petition under the laws of bankruptcy or insolvency or at any time thereafter.

### **79. INITIAL NOTICE.**

(1) An initial notice is sufficient if it -

- (a) identifies the debtor and provides a physical address; and
- (b) identifies the secured party and provides a physical address; and
- (c) describes the collateral covered by the notice.

(2) For the purpose of Subsection (1)(c), a notice that covers fixtures, timber to be cut, or as-extracted collateral may include the real property identification number of the real property where the fixtures, timber to be cut, or as-extracted collateral are located.

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(3) A person is entitled to register an initial notice only if the debtor authorises the registration.

- (4) Authorisation by the debtor -
- (a) need not be contained in the notice; and
  - (b) need not be disclosed to the registrar; and
  - (c) may be given after registration.

(5) By signing a security agreement, a debtor authorises the registering of an initial notice covering the collateral described in the security agreement, and proceeds of the collateral, whether or not the security agreement expressly covers proceeds.

### **80. NOTICE PRIOR TO SECURITY AGREEMENT OR ATTACHMENT.**

A notice may be registered before a security agreement is concluded and before a security interest attaches to collateral.

### **81. NOTICE MAY APPLY TO MULTIPLE AGREEMENTS.**

A notice may relate to one or more security agreements.

### **82. NOTICE IS EFFECTIVE UNLESS SERIOUSLY MISLEADING.**

(1) A notice substantially complying with the requirements of this Act is effective, even if it is insufficient under this section, unless the insufficiency makes the notice seriously misleading.

(2) A notice that insufficiently provides the name of the debtor is seriously misleading.

### **83. NAME OF DEBTOR.**

- (1) A notice sufficiently provides the name of the debtor when -
- (a) in the case of an individual who is a citizen of Papua New Guinea, the notice contains the name of the individual; or
  - (b) in the case of an individual who is not a citizen of Papua New Guinea, the notice contains the name of the person as indicated on the individual's passport; or
  - (c) in the case of an entity established by the *Constitution* or other law of Papua New Guinea, the notice contains the name of the debtor as provided by law that established the entity; or
  - (d) in the case of an entity organised or authorised to do business under the *Companies Act 1997* or other Act in which documents of organisation are subject to registration in the companies registry, the number of the entity as assigned by the companies registry; or
  - (e) in the case of a foreign entity not authorised to do business under the law of Papua New Guinea, the notice provides the name of the debtor as shown on the appropriate registry in the country where the foreign entity is organised.

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(2) A notice that sufficiently provides the name of the debtor is not rendered ineffective by the presence or absence of a trade name or other name of the debtor.

(3) A notice that provides the debtor's trade name but does not comply with Subsection (1) does not sufficiently provide the name of a debtor.

(4) A notice may provide the name of more than one debtor and the name of more than one secured party.

(5) The failure to indicate on a notice that a person is a representative of the secured party does not affect the sufficiency of a notice.

### **84. EFFECT OF CHANGE OF CIRCUMSTANCES.**

(1) A registered notice remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest continues, even if the secured party knows of or consents to the disposition.

- (2) If a debtor changes its name so that the notice becomes seriously misleading -
- (a) the notice is effective, without amendment, to perfect a security interest in collateral acquired by the debtor for 4 months after the change of name; and
  - (b) the notice is effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change of name if, within 4 months from the date of the change of name, an amendment to the notice is registered that identifies the debtor by its changed name.

(3) Except as provided in this section for a change of debtor name, a notice remains effective if, after the notice is registered, a change of circumstances renders the notice seriously misleading.

### **85. DURATION OF NOTICE AND EFFECT OF LAPSE.**

(1) A registered notice is effective for a period measured in years that is designated by the person who registers the notice, and lapses at the end of the designated period unless, before the lapse, a continuation statement is registered.

(2) Upon lapse, a notice becomes ineffective and a security interest that was perfected by the notice becomes unperfected, unless the security interest is perfected without registration.

(3) If the security interest becomes unperfected upon lapse, it is deemed never to have been perfected against a purchaser of the collateral for value.

### **86. AMENDMENT OF NOTICE.**

- (1) An initial notice may be amended by one or more amendments.
- (2) An amendment must -
- (a) identify the initial notice by its registration number; and

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- (b) identify the secured party on the notice who authorises the amendment; and
  - (c) indicate that it is an amendment to the notice; and
  - (d) provide all of the information required of an initial notice, completely restating the notice in a manner that reflects the amended state of the notice.
- (3) If an amendment adds collateral covered by a notice, or adds a debtor to a notice, it is effective if the debtor authorises the registration in a signed writing.
- (4) For the purposes of Subsection (3)-
- (a) by signing a security agreement that adds collateral, a debtor authorises the registration of an amendment covering the collateral described in the security agreement, and proceeds of the collateral, whether or not the security agreement expressly covers proceeds; and
  - (b) by signing a security agreement, a new debtor authorises the registering of an amendment that adds the name and address of the new debtor to the notice.
- (5) An authorisation by the debtor under Subsection (4)-
- (a) need not be contained in the amendment; and
  - (b) need not be disclosed to the registrar; and
  - (c) may be given after registration of the amendment.
- (6) An amendment –
- (a) that adds collateral is effective as to the added collateral only from the date of the registration of the amendment; and
  - (b) that adds a debtor is effective as to the added debtor only from the date of the registration of the amendment; and
  - (c) other than an amendment to add collateral or add a debtor is effective only if a secured party on the notice authorises the registration of the amendment in a signed writing.
- (7) An amendment is ineffective if it purports to delete all secured parties and fails to provide the name of a new secured party, or purports to delete the names of all debtors and fails to provide the name of a new debtor not previously named on the notice.
- (8) If there is more than one secured party on the notice -
- (a) any secured party or all secured parties may authorise the registration of an amendment; and
  - (b) the amendment is effective if a secured party authorises the registration in a signed writing.
- (9) The registration of an amendment does not extend the period of effectiveness of a notice.

### **87. CONTINUATION OF NOTICE.**

(1) The period of effectiveness of a notice may be continued by registering a continuation statement that -

- (a) identifies the initial notice by its registration number; and

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- (b) identifies a secured party on the notice who authorises the continuation statement; and
- (c) indicates that the effectiveness of the notice, with respect to the secured party who authorised the registration, is to be continued.

(2) A continuation statement may be registered only within 6 months before the date upon which the notice would otherwise lapse.

(3) Upon timely registration of a continuation statement, the effectiveness of the notice continues for a period of 5 years commencing on the day on which the notice would have become ineffective in the absence of the continuation statement.

(4) The effectiveness of a notice is continued only with respect to the secured party who authorised the registration of the continuation statement.

- (5) Upon the expiration of the new 5-year period -
- (a) the notice lapses with respect to the secured party unless, before the lapse, another continuation statement authorised by that secured party is registered; and
  - (b) succeeding continuation statements may be registered in the same manner to continue the effectiveness of the notice.

### **88. TERMINATION OF NOTICE.**

(1) The effectiveness of a notice may be terminated by registering a termination statement that -

- (a) identifies the initial notice by its registration number; and
- (b) identifies a secured party on the notice who authorises the termination statement; and
- (c) indicates that the notice is no longer effective with respect to the interest of the secured party who authorised the registration of the termination statement.

(2) Within 14 days after the secured party receives a written demand by the debtor, the secured party on a notice shall register a termination statement if -

- (a) there is no outstanding secured obligation and no commitment to make an advance, incur an obligation, or otherwise give value; or
- (b) the debtor did not authorise the registration of the initial notice; or
- (c) the notice covers accounts or chattel paper that have been sold but as to which the account debtor or other person obligated has discharged its obligation.

(3) A termination statement terminates the effectiveness of a notice with respect to a secured party on the notice only if the termination statement is authorised in a signed writing by that secured party.

(4) Upon the registration of an effective termination statement, the notice to which the termination statement relates becomes ineffective with respect to the authorising secured party.

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### **89. EFFECTIVENESS OF NOTICE.**

An initial notice, amendment, continuation statement, or termination statement is effective at the time it is available to the public by means of a search of the records of the registry as provided in this Act.

### **90. REGISTRAR'S REFUSAL TO REGISTER A NOTICE.**

- (1) The registrar may refuse to register a notice only because -
  - (a) in the case of an initial notice, the notice does not provide the name of a debtor; or
  - (b) in the case of an amendment, the amendment does not provide the name of a debtor, does not provide the registration number of the initial notice, or the amendment identifies an initial notice whose effectiveness has lapsed; or
  - (c) in the case of a continuation statement, the continuation statement does not provide the registration number of the initial notice, or was not submitted within the permitted six-month time period; or
  - (d) in the case of a termination statement, the termination statement does not provide the registration number of the initial notice, or the termination statement relates to an initial notice that has lapsed with respect to each secured party on the notice; or
  - (e) less than the full registration fee is tendered, or no other arrangement has been made for the payment of the fee.

(2) A notice that the registrar refuses to accept for a reason other than one set forth in this section remains effective except against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the notice from the registry.

(3) If a registrar refuses to accept a notice for registration, it shall promptly communicate the fact of and reason for its refusal to the person that presented the notice.

### **91. EFFECT OF SECURED PARTY'S NOTICE ON OTHER SECURED PARTIES ON THE NOTICE.**

An amendment, continuation statement, or termination statement authorised by one secured party on the notice does not affect the rights of another secured party on the notice.

### **92. DUTIES OF THE REGISTRAR.**

- (1) For each notice registered, the registrar shall -
  - (a) assign a unique registration number in the case of an initial notice; and
  - (b) assign a unique number to notices other than the initial notice; and
  - (c) create a writing that bears the registration number and the date and time of registration; and
  - (d) maintain registered notices for public inspection.
- (2) The registrar shall maintain the capability to retrieve registry records -
  - (a) by the name of the debtor;
  - (b) by the registration number of the initial notice, in a manner that associates the initial notice with all related amendments, continuation statements, and termination statements; and

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- (c) by the serial number of a serial numbered vehicle, if a serial number was provided on the notice in a field prescribed by the registrar; and
- (d) by the real property identification number, if a real property identification number was provided on the notice.

(3) A notice that the registrar fails to maintain as required in Subsection (2) remains effective except against a purchaser of the collateral that gives value in reasonable reliance upon the information available from the registry.

(4) The registrar shall maintain records of lapsed or terminated notices for a period of 10 years beyond the date of lapse or termination.

#### **93. PUBLIC ACCESS TO REGISTRY RECORDS.**

(1) Information contained in notices are public information and are the property of the state.

(2) The registrar shall communicate the following information to any person that requests it -

- (a) whether there is registered a notice that designates a particular debtor, serial number, or real property identification number and has not lapsed with respect to all secured parties;
- (b) the registration number, and the date and time of registration of each notice;
- (c) the name and address of each debtor and secured party on each notice; and
- (d) all of the information contained in each notice.

(3) The registrar may communicate information in any medium.

(4) Notwithstanding Subsection (3), if requested, the registrar shall issue a certified search report or other report as may be required and bearing a written certificate, which shall be admitted into evidence in the courts without extrinsic evidence of its authenticity.

(5) The registrar may communicate information about some or all registered notices to interested persons from time to time, on terms agreeable to the registrar and, notwithstanding Section 77, including a reasonable fee for provision of the service.

#### **94. NOTICE DOES NOT CONSTITUTE CONSTRUCTIVE NOTICE.**

Registration of a notice in the registry is not constructive notice or knowledge of its existence or contents to any person.

### **PART VIII. – ENFORCEMENT OF SECURITY INTERESTS.**

*The purpose of this Part is to provide for the rights, duties, and obligations of debtors, secured parties, and others upon the debtor's default on a secured obligation.*

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**95. APPLICATION OF THIS PART.**

- (1) This Part does not apply to -
  - (a) a transaction described in Section 10(2)(a); or
  - (b) the interest of an execution creditor; or
  - (c) a transaction in which a person pledges property to a pawnbroker.
- (2) The rights and remedies set out in this Part are cumulative.
- (3) A security interest does not merge merely because a secured party has obtained a judgment against the debtor.

**96. SCOPE OF RIGHTS AND REMEDIES UPON DEFAULT.**

Where the debtor is in default under a security agreement, the secured party has against the debtor -

- (a) the rights and remedies provided in the security agreement; and
- (b) the rights and remedies provided by any other Act or rule of law that is not inconsistent with this Act; and
- (c) the rights, remedies and obligations provided in this Part and Sections 69, 71, 73, and 74; and
- (d) where the secured party is in possession or control of the collateral, the rights, remedies and obligations provided in Sections 17, 18, and 19.

**97. COLLECTION RIGHTS OF SECURED PARTY.**

- (1) In the event of default, a secured party may -
  - (a) notify a debtor on an intangible or chattel paper or a person obligated to pay or perform on an instrument or security to make payment to the secured party whether or not the assignor was making collections on the collateral before the notification; and
  - (b) subject to Section 99, take control of any proceeds to which the secured party is entitled; and
  - (c) apply any money, account, instrument or security in the form of a debt obligation taken as collateral to the satisfaction of the obligation secured by the security interest.
- (2) Where the collateral is a licence, the secured party may seize the collateral by giving notice to the debtor, or to the grantor of the license or any successor to the interest in the license.
- (3) A secured party may deduct reasonable expenses of collection from -
  - (a) amounts collected from a debtor on an intangible or chattel paper or from a person obligated to pay or perform under an instrument or security; or
  - (b) money held as collateral.

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**98. SECURED PARTY'S RIGHT TO TAKE POSSESSION AND DISPOSE OF COLLATERAL.**

(1) Subject to Sections 69, 71, and 73 and any rule of law requiring prior notice, on default under a security agreement –

- (a) the secured party has, unless otherwise agreed, the right to take possession of the collateral or otherwise enforce the security agreement by any method permitted by law; and
- (b) where the collateral is goods of a kind that cannot be readily moved from the debtor's premises or of a kind for which adequate storage facilities are not readily available, the secured party may seize or repossess the collateral without removing it from the debtor's premises in any manner by which an execution officer acting under a writ of execution may seize without removal, if the secured party's interest is perfected by registration; and
- (c) where Paragraph (b) applies, the secured party may dispose of collateral on the debtor's premises, but shall not cause the person in possession of the premises any greater inconvenience and cost than is necessarily incidental to the disposal; and
- (d) if the collateral is a document of title, the secured party may -
  - (i) proceed either as to the document of title or as to the goods covered by it; and
  - (ii) a method of enforcement that is available with respect to the document of title is also available, with any necessary modification, with respect to the goods covered by it.

**99. MANNER OF DISPOSITION OF COLLATERAL.**

(1) The disposition of collateral may be -

- (a) by private sale; or
- (b) by public sale, including public auction or closed tender; or
- (c) as a whole or in commercial units or parts; or
- (d) by lease, credit sale, license; or
- (e) other commercially reasonable manner of disposition.

(2) After seizing or repossessing the collateral, a secured party may dispose of it in its existing condition or after repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to -

- (a) the reasonable expenses of seizing, repossessing, holding, repairing, processing or preparing for disposition and disposing of the collateral and any other reasonable expenses incurred by the secured party; and
- (b) the satisfaction of the obligations secured by the security interest of the party making the disposition,

any surplus shall be dealt with in accordance with Section 105.

(3) The secured party may delay disposition of the collateral in whole or in part.

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### **100. DUTY TO ACT IN A COMMERCIALLY REASONABLE MANNER.**

(1) A secured party must act in a commercially reasonable manner when disposing of collateral in a manner authorised by this Part.

(2) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(3) A disposition of collateral is made in a commercially reasonable manner if the disposition is made -

- (a) in the usual manner on any recognized market; or
- (b) at the price current in any recognized market at the time of the disposition; or
- (c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(4) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved in a judicial proceeding or by an assignee for the benefit of creditors, but approval is not required and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

### **101. OBLIGATION TO GIVE NOTICE OF DISPOSITION OF COLLATERAL.**

(1) Not less than 7 days prior to disposition of the collateral, a secured party shall deliver a notice to -

- (a) the debtor; and
- (b) any other person who is known by the secured party to be an owner of the collateral; and
- (c) a creditor or person with a security interest in the collateral whose interest is subordinate to that of the secured party where -
  - (i) prior to the day on which the notice of disposition is given to the debtor, the creditor or person with a security interest in the collateral has registered a notice according to the name of the debtor or according to the serial number of the collateral if the goods are serial numbered vehicles; or
  - (ii) the security interest of the creditor or person with a security interest in the collateral is perfected by possession at the time when the secured party seized or repossessed the collateral; and
  - (iii) any other person with an interest in the collateral who has given a written notice to the secured party of that person's interest in the collateral prior to the day on which the notice of disposition is given to the debtor.

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- (2) A notice mentioned in Subsection (1), delivered by a secured party, shall contain -
- (a) a description of the collateral; and
  - (b) the amount required to satisfy the obligations secured by the security interest; and
  - (c) the amount of applicable expenses or, where the amount of the expenses has not been determined, a reasonable estimate; and
  - (d) the day, time and place of any sale by public auction, the place to which closed tenders may be delivered and the day after which closed tenders will not be accepted, or the day after which any private disposition of the collateral is to be made.
- (3) A notice mentioned in Subsection (1), delivered by a receiver, shall contain -
- (a) a description of the collateral; and
  - (b) a statement that, unless the collateral is redeemed, it will be disposed of; and
  - (c) the day, time and place of any sale by public auction, the place to which closed tenders may be delivered and the day after which closed tenders will not be accepted, or the day after which any private disposition of the collateral is to be made.
- (4) A notice under this section is not required where -
- (a) the collateral is perishable; or
  - (b) the secured party believes on reasonable grounds that the collateral will decline substantially in value if it is not disposed of immediately after default; or
  - (c) the cost of care and storage of the collateral is disproportionately large in relation to its value; or
  - (d) the collateral is of a type that is to be disposed of by sale on an organised market that handles large volumes of transactions between many different sellers and many different buyers; or
  - (e) the collateral is money authorised or adopted by a foreign government as part of its currency; or
  - (f) after default, each person entitled to receive a notice of disposition consents in writing to the disposition of the collateral without compliance with the notice requirements of this section; or
  - (g) for any other reason, a court on ex parte application is satisfied that a notice is not required.

### **102. SECURED PARTY MAY PURCHASE COLLATERAL AT PUBLIC SALE.**

The secured party may purchase the collateral or any part of it only at a public sale for a price that bears a reasonable relationship to the market value of the collateral.

### **103. RIGHTS OF PURCHASERS OF COLLATERAL.**

Where a secured party disposes of the collateral to a purchaser for value and in good faith and who takes possession of it -

- (a) the purchaser acquires the collateral free from -
  - (i) the interest of the debtor; and

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- (ii) an interest subordinate to that of the debtor; and
  - (iii) an interest subordinate to that of the secured party whether or not the requirements of this Part have been complied with by the secured party; and
- (b) all obligations secured by the subordinate interests are deemed to be performed for the purposes of a demand to terminate a notice.

### **104. SECURED PARTY'S DISPOSITION OF A LICENSE.**

Notwithstanding any other provision of this Part, where the collateral is a licence, the collateral may be disposed of only in accordance with the terms and conditions that applied at the time that the secured party took control of the license.

### **105. SURPLUS OR DEFICIENCY.**

(1) Where a security agreement secures a debt and the secured party has dealt with the collateral under Section 97 or has disposed of it in accordance with Section 99 or otherwise, any surplus shall, unless otherwise provided by law or by the agreement of all interested parties, be accounted for and paid in the following order to –

- (a) a person who has a subordinate security interest in the collateral; and -
  - (i) who, before the distribution of the surplus, registers a notice using the name of the debtor or according to the serial number of the collateral if the goods are serial numbered vehicles; or
  - (ii) whose interest was perfected by possession at the time when the collateral was seized;
- (b) any other person with an interest in the surplus, if that person has given a written notice of the interest to the secured party prior to the distribution; and
- (c) the debtor or any other person who is known by the secured party to be an owner of the collateral,

but the priority of the claim of any person mentioned in Paragraphs (a), (b) or (c) is not prejudiced by payment to anyone under this section.

(2) The secured party shall give a written accounting of -

- (a) the amount received from the disposition of collateral or the amount collected under Section 97; and
- (b) the manner in which the collateral was disposed of; and
- (c) the amount applied to expenses as provided in Sections 17, 97, and 99; and
- (d) the distribution of the amount received from the disposition or collection; and
- (e) the amount of any surplus,

to a person mentioned in Subsection (1) within 30 days after receipt of a written request for an accounting.

(3) Where there is a question as to who is entitled to receive payment under Subsection (1), the secured party may pay the surplus into court, and the surplus shall not be paid out except on an application under Section 109 by a person claiming an entitlement to it.

(4) Except as otherwise agreed or as otherwise provided in this Act or any other Act, the debtor is liable to pay the amount of the deficiency to the secured party.

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**106. SECURED PARTY'S RIGHT TO RETAIN COLLATERAL.**

(1) After default, the secured party may propose to take the collateral in full or partial satisfaction of the obligation secured by it, and shall give notice of the proposal to -

- (a) the debtor and any other person who is known by the secured party to be an owner of the collateral; and
- (b) a creditor or person with a security interest in the collateral whose interest is subordinate to that of the secured party and -
  - (i) who, prior to the day on which notice is given to the debtor, has registered a notice using the name of the debtor or according to the serial number of serial numbered vehicles; and
  - (ii) whose security interest is perfected by possession when the secured party seized or repossessed the collateral; and
- (c) any other person with an interest in the collateral who has given a written notice to the secured party of that interest prior to the day on which the notice is given to the debtor.

(2) The secured party shall dispose of the collateral under Section 99 if any person who is entitled to a notice under Subsection (1) and whose interest in the collateral would be adversely affected by the secured party's proposal gives written objection to the secured party within 14 days after the secured party has given the notice under Subsection (1).

(3) If no objection is given and if the proposal under Subsection (1) provides for full satisfaction of the secured obligation, the secured party is, at the expiration of the 14-day period mentioned in Subsection (2) -

- (a) deemed to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it, in accordance with the terms of the proposal; and
- (b) may hold or dispose of the collateral free from all rights and interests of the debtor and from the rights and interests of any person entitled to receive and who has been given notice under -
  - (i) Subsection (1)(b); or
  - (ii) Subsection (1)(c) if the person's interest is subordinate to that of the secured party.

(4) If a secured party has the right to retain collateral under Subsection (3), all secured obligations are deemed to have been performed for the purposes of Section 88.

(5) The secured party may request that any person mentioned in Subsection (1), other than the debtor, furnish proof of that person's interest and, unless the person furnishes proof not later than 14 days after the secured party's request, the secured party may proceed as if no objection were received from the person.

(6) On application by a secured party, the court may determine that an objection to the proposal of a secured party is ineffective on the ground that -

- (a) the person made the objection for a purpose other than the protection of an interest in the collateral or proceeds of a disposition of the collateral; or

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- (b) the market value of the collateral is less than the total amount owing to the secured party and the costs of disposition.

### **107. DEBTOR'S RIGHT TO REDEEM COLLATERAL.**

At any time before the secured party or a receiver has disposed of the collateral or contracted for disposition or before the secured party is deemed to have irrevocably elected to retain the collateral, a person who is entitled to receive a notice of disposition under Section 101 may, unless that person otherwise agrees in writing after default, redeem the collateral by -

- (a) tendering fulfilment of the obligations secured by the collateral; and
- (b) a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the collateral for disposition, if those expenses have actually been incurred by the secured party, and any other reasonable expenses incurred by the secured party in enforcing the security agreement.

### **108. ENFORCEMENT OF A SECURITY INTEREST IN A MORTGAGE.**

(1) Subject to any other Act or rule of law to the contrary, where the same obligation is secured by an interest in a mortgage in real property and a security interest in personal property, the secured party may -

- (a) without limiting the secured party's rights, remedies and duties, proceed under this Part as to the personal property; or
- (b) proceed as to both the interest in the mortgage and the personal property.

(2) Subsection (1)(b) does not limit the rights of a secured party who has a security interest in personal property that is taken before or after the security interest mentioned in Subsection (1), and the secured party -

- (a) has standing in proceedings taken in accordance with Subsection (1)(b); and
- (b) may apply to the court for the conduct of a judicially supervised sale under Subsection (1)(b), and the court may grant the application.

(3) For the purpose of distributing the amount received from the sale of the real property and personal property under this section, where the purchase price is not allocated to the real property and the personal property separately, the amount of the total price that is attributable to the sale of the personal property is the proportion of the total price that the market value of the personal property at the time of sale bears to the market value of the real property and the personal property at the time of the sale.

### **109. APPLICATIONS TO COURT.**

(1) On application by a debtor, a creditor of a debtor, a secured party, an execution officer or a person with an interest in the collateral, the court may make one or more of the following orders -

- (a) an order, including a binding declaration of a right and an order for injunctive relief, that is necessary to ensure compliance with this Part or Sections 17, 69, 71, 72, or 73; or

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- (b) an order giving directions to any person regarding the exercise of rights or the discharge of obligations under this Part or Sections 17, 69, 71, 72, or 73; or
- (c) an order relieving a person from compliance with the requirements of this Part or Sections 17, 69, 71, 72, or 73; or
- (d) an order staying enforcement of rights provided in this Part or Sections 17, 69, 71, 72, or 73; or
- (e) any order that is necessary to ensure protection of the interest of any person in the collateral.

#### **110. RECEIVERS.**

(1) In this section, "Director" means the Director appointed under the *Companies Act 1997*.

(2) A security agreement may provide for the appointment of a receiver and, except as provided in this or any other Act, for the rights and duties of a receiver.

(3) A receiver shall -

- (a) take custody and control of the collateral in accordance with the security agreement or order under which the receiver is appointed, but shall not carry on the business of the debtor unless appointed under the security agreement or by the court to do so; and
- (b) where the debtor is a corporation, immediately notify the Director of the appointment or discharge of the receiver; and
- (c) open and maintain, in the receiver's name as receiver, one or more accounts at a financial institution licensed to accept deposits for the deposit of all money that comes under the receiver's control as receiver; and
- (d) keep records, in accordance with accepted accounting practices, of all receipts, expenditures and transactions that involve collateral or other property of the debtor; and
- (e) prepare, at least once in every six-month period after the date of the appointment, financial statements of the receivership; and
- (f) indicate on every business letter, invoice, contract or similar document used or executed in connection with the receivership that the receiver is acting as a receiver; and
- (g) on completion of the receiver's duties, prepare a final account of the administration in the prescribed form and, where the debtor is a corporation, send a copy of the final account to the debtor, to a director of the debtor and to the Director.

(4) The debtor and, where the debtor is a corporation, a director of the debtor, or the authorised representative of any of them, may, by a demand in writing delivered to the receiver, require the receiver to make available for inspection the records mentioned in Subsection (3)(d) during regular business hours at the place of business of the receiver in Papua New Guinea.

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(5) The debtor and, where the debtor is a corporation, a director of the debtor, an execution officer, a person with an interest in the collateral in the custody or control of the receiver, or the authorised representative of any of them, may, by a demand in writing delivered to the receiver, require the receiver to provide copies of the financial statements mentioned in Subsection (3)(e) or the final accounts mentioned in Subsection (3)(g) or to make them available for inspection during regular business hours at the place of business of the receiver in Papua New Guinea.

(6) The receiver shall comply with the demand mentioned in Subsections (4) or (5) not later than 14 days after the day of receipt of the demand.

(7) The receiver may require the payment in advance of a fee in the prescribed amount for each demand, but the execution officer and the debtor or, in the case of an incorporated debtor, a director of the debtor, are entitled to inspect or to receive a copy of the financial statements and final account without charge.

- (8) On application by an interested person, the court may -
- (a) appoint a receiver;
  - (b) remove, replace or discharge a receiver, whether appointed by a court or under a security agreement;
  - (c) give directions on any matter relating to the duties of a receiver;
  - (d) approve the accounts and fix the remuneration of a receiver;
  - (e) notwithstanding anything contained in a security agreement or other document providing for the appointment of a receiver, make an order requiring a receiver, or a person by or on behalf of whom the receiver is appointed, to make good a default in connection with the receiver's custody, management or disposition of the collateral of the debtor or to relieve the person from any default or failure to comply with this Part;
  - (f) exercise with respect to receivers appointed under a security agreement the jurisdiction that it has over receivers appointed by the court.

(9) The powers mentioned in Subsection (8) and in Section 109 are in addition to any other powers the court may exercise in its jurisdiction over receivers.

(10) Unless the court orders otherwise, a receiver is required to comply with Section 99 and 105 only where the receiver disposes of collateral other than in the course of operating the business of a debtor.

- (11) The term "secured party" applies to a receiver in -
- (a) Part IV; and
  - (b) Part VI, Divisions 5 and 7; and
  - (c) Part VIII, except Sections 102, 106, 107, and 108.

### **111. MANNER OF NOTIFICATION TO DEBTORS, SECURED PARTIES, AND OTHER PERSONS.**

(1) Where a provision of this Act requires or permits the communication of a demand or notification to a person, the notification is effective -

- (a) in the case a natural person who is a debtor, when the notification is -

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- (i) delivered to the debtor; or
- (ii) posted by registered mail to the person's last known postal address; or
- (iii) dispatched in accordance with the debtor's agreement;
- (b) in the case of a secured party named on a registered notice, when the notification is -
  - (i) delivered to the secured party; or
  - (ii) posted by registered mail to the address on the registered notice; or
- (c) in the case of a person who has requested the notification, when the notification is -
  - (i) delivered to the person; or
  - (ii) posted by registered mail to the person's postal address as stated in the request; or
  - (iii) in the case of a company, posted to the company's registered office; or
  - (iv) dispatched in accordance with an agreement with the person;
- (d) in the case of any other person, when the notification is -
  - (i) delivered to the person; or
  - (ii) in the case of a company, posted to the company's registered office; or
  - (iii) dispatched in accordance with an agreement with the person.

(2) Notwithstanding Subsection (1), notification to a person that is a company organised under the *Companies Act 1997* may be made in any manner authorised by that Act.

### **PART IX. – CONFLICT OF LAWS.**

#### **112. WHEN PAPUA NEW GUINEA LAW APPLIES.**

(1) Except as otherwise provided in this Act, the validity, perfection, and the effect of perfection or non-perfection of a security interest in goods or a possessory security interest in chattel paper, investment property, money, a document of title, or a negotiable instrument, is governed by the law of Papua New Guinea if -

- (a) at the time the security interest attaches to the collateral, the collateral is situated in Papua New Guinea; or
- (b) at the time the security interest attaches to the collateral, the collateral is situated outside Papua New Guinea but the secured party has knowledge that it is intended to move the collateral to Papua New Guinea; or
- (c) the security agreement provides that Papua New Guinea law is the law governing the transaction; or
- (d) in any other case, Papua New Guinea law applies.

(2) For the purposes of Subsection (1), investment property is situated where the records of the clearing house or securities depository are kept.

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### **113. CONTINUITY OF PERFECTION WHERE GOODS ARE MOVED TO PAPUA NEW GUINEA.**

(1) A security interest in goods that is perfected under the law of the jurisdiction in which the goods are situated when the security interest attached and before the goods are brought into Papua New Guinea continues to be perfected in Papua New Guinea if it is perfected in Papua New Guinea by the earliest of the following -

- (a) not later than 60 days after the day on which the goods are brought into Papua New Guinea; or
- (b) not later than 14 days after the day on which the secured party has knowledge that the goods have been brought into Papua New Guinea; or
- (c) before perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached.

(2) A security interest that is not perfected as provided in Subsection (1) may be otherwise perfected in Papua New Guinea under this Act.

### **114. TEMPORARY PERFECTION OF SECURITY INTEREST IN COLLATERAL MOVED TO PAPUA NEW GUINEA.**

(1) A security interest in collateral that is moved to Papua New Guinea is temporarily perfected by registration until the expiration of 30 days after the day on which the collateral was moved to Papua New Guinea, if the security interest was not perfected under the law of the jurisdiction in which the collateral was situated when the security interest attached.

(2) If a security interest referred to in Section 112 is not perfected under the law of the jurisdiction in which the collateral was situated when the security interest attached and before the collateral was brought into Papua New Guinea, it may be perfected under this Act.

### **115. LOCATION OF DEBTOR.**

For the purposes of Sections 116 through 119 -

- (a) a debtor that is a corporate body is located in the country of incorporation; and
- (b) a debtor that is not a corporate body is located at -
  - (i) the debtor's place of business; or
  - (ii) the debtor's principal place of business if the debtor has more than one place of business; or
  - (iii) the debtor's principal residence if the debtor has no place of business.

### **116. VALIDITY AND PERFECTION OF SECURITY INTERESTS IN INTANGIBLES AND CERTAIN GOODS.**

The validity, perfection, and effect of perfection or non-perfection of a security interest is governed by the law, including the conflict of laws rules, of the jurisdiction where the debtor is located when the security interest attaches, if the security interest is -

- (a) a security interest in an intangible; or
- (b) a security interest in goods that are of a kind that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others; or

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- (c) a non-possessory security interest in chattel paper, investment property, a document of title, money, or a negotiable instrument.

### **117. POSITION WHERE DEBTOR RELOCATES.**

If a debtor relocates to another jurisdiction or transfers an interest in collateral to a person located in another jurisdiction, a security interest perfected in accordance with the law applicable, as provided in Section 115, continues to be perfected in Papua New Guinea if it is perfected in the other jurisdiction by the earliest of the following -

- (a) not later than 60 days after the day on which the debtor relocates or transfers an interest in the collateral to a person located in the other jurisdiction; or
- (b) not later than 14 days after the day on which the secured party has knowledge that the debtor has relocated or transferred an interest in the collateral to a person located in the other jurisdiction; or
- (c) prior to the day on which perfection ceases under the law of the first jurisdiction.

### **118. PRIORITY WHERE THERE IS NO PUBLIC RECORD OF A PERFECTED SECURITY INTEREST.**

(1) If the law governing the perfection of a security interest referred to in Section 116 or Section 117 does not provide for public registration or recording of the security interest or a notice relating to it, and the collateral is not in the possession of the secured party, the security interest is subordinate to -

- (a) an interest in an account, chattel paper, or instrument that is payable in Papua New Guinea; or
- (b) an interest in goods, investment property, a negotiable instrument, a document of title, money, or chattel paper, acquired when the collateral was situated in Papua New Guinea.

(2) Subsection (1) does not apply if the security interest is perfected under this Act before the interest referred to in Subsection (1)(a) or Subsection (1)(b) arises.

(3) A security interest to which Subsection (1) applies may be perfected under this Act.

### **119. PERFECTION OF SECURITY INTEREST IN AS-EXTRACTED COLLATERAL.**

Notwithstanding Section 116, the perfection and the effect of perfection or non-perfection of a security interest in as-extracted collateral is governed by the law of the jurisdiction in which the minehead or wellhead is located if the security interest -

- (a) is provided for in a signed security agreement before extraction; and
- (b) attaches to the as-extracted collateral.

## **PART X. – TRANSITIONAL PROVISIONS.**

*The purpose of this Part is to provide for the transition to this Act, establishing rules governing potential conflict between a secured creditor whose rights arose prior to the commencement of this Act and secured creditors whose security interests in the same collateral arise under this Act.*

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### **119. TRANSITIONAL.**

(1) In this Part -

- (a) “prior lien” means the right of an execution creditor whose right arose prior to the commencement of this Act; and
- (b) “prior transaction” means a transaction concluded prior to the commencement of this Act that would otherwise fall within the scope of this Act; and
- (c) “transitional notice” means notice of the interest of a person under a prior lien or a prior transaction.

(2) The validity, effect and enforcement of a prior transaction or prior lien shall be determined by reference to the law in effect when the prior transaction was concluded or the prior lien arose, except as provided otherwise in this section.

(3) The provisions of this Act on registration, priority, and enforcement apply to a prior transaction or prior lien only in the case of conflict between the prior transaction or prior lien and a security interest created under this Act.

(4) A creditor under a prior transaction and the holder of a prior lien may register a transitional notice at any time.

(5) A transitional notice -

- (a) may be registered in the same manner as provided for a notice of a security interest or notice of the right of an execution creditor; and
- (b) the authorisation of the debtor is not required.

(6) If a transitional notice is registered -

- (a) on or before the 180<sup>th</sup> day from the commencement of this Act, the interest subject to the transitional notice has priority over a security interest created under this Act, with priority measured from the date of the commencement of this Act; and
- (b) after the 180<sup>th</sup> day from the commencement of this Act, the priority of the interest subject to the transitional notice against a security interest created under this Act shall be determined -
  - (i) according to the priority rules established in this Act; and
  - (ii) from the date of registration of the transitional notice.

(7) Except as provided in Subsection (6), if no transitional notice is registered, a security interest perfected under this Act has priority over the prior transaction or prior lien.

(8) A person who registers a transitional notice with respect to a prior transaction that would constitute a purchase-money security interest in inventory under this Act has no obligation to provide direct notification to a holder of a conflicting security interest in the inventory.

### **120. REPEAL.**

The following Acts are hereby repealed -

- (a) the *Instruments Act* (Chapter 254);
- (b) the *Hire-Purchase Act* (Chapter 252).

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I hereby certify that the above is a fair print of the *Personal Property Security Act 2011* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Personal Property Security Act 2011* was made by the National Parliament on 09 December 2011, with an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.