

## SAMOA

## Arrangement of Provisions

PART I  
PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Overview
4. Act binds Government
5. Application

PART II  
SECURITY INTEREST*Division 1 – Security interest  
and secured obligation*

6. Obligations
7. Security interest in consumer goods
8. Description of collateral
9. Attachment of security interest
10. Notice to account debtors not required
11. Continuity of security interest
12. Request for accounting or statement of account

*Division 2 – Security agreement*

13. Security agreement

*Division 3 – Perfection  
of security interest*

14. Perfection of security interest
15. Means of perfection in special cases
16. Meaning of “possession” in certain cases
17. Perfection by different means
18. Assignment of security interest
19. Lapse of perfection

*Division 4 – Priority*

20. General priority rules
21. Priority continues in proceeds
22. Purchase of secured sales contracts or instruments
23. Transferee exceptions
24. Purchase money security interest
25. Priority in fixtures
26. Crops
27. Right of retention
28. Priority in accessions
29. Commingled goods
30. Subordination
31. Meaning of “knowledge”

PART III  
FILING

*Division 1 – Registry operation*

- 32. Establishment of electronic filing Registry
- 33. Public record

*Division 2 – Notices to be filed*

- 34. Initial notice
- 35. Name of debtor and secured party
- 36. Effectiveness of notice
- 37. Effects of change of circumstances
- 38. Amendment of notice
- 39. Continuation
- 40. Termination
- 41. Notice of objection

*Division 3 – Authority and duties of the Registrar*

- 42. Appointment of the Registrar
- 43. Registrar duties
- 44. Refusal to file notice

*Division 4 – Information from Registry*

- 45. Search of filing office records and certified report

*Division 5 – Filing fees*

- 46. Fees set by regulation

PART IV  
ENFORCEMENT OF  
SECURITY INTERESTS

*Division 1 – Secured Party's Rights*

- 47. Secured party rights upon default by debtor
- 48. Recovery without judicial process in certain cases
- 49. Expedited possession by secured party

*Division 2 – Disposition or retention of collateral*

- 50. Right to dispose of collateral
- 51. Commercial reasonableness required
- 52. Notice of disposition
- 53. Secured party possession of collateral
- 54. Notice and claim for distribution
- 55. Application of proceeds and clear title of buyer
- 56. Retention of collateral by secured party

*Division 3 – Debtor rights*

- 57. Debtor's right to reinstate security agreement
- 58. Consequences of reinstating agreement
- 59. Redemption
- 60. Remedies for secured party non-compliance

PART V  
MISCELLANEOUS

- 61. Pre-emption of conflicting Acts
- 62. Regulations and orders
- 63. Offences
- 64. Repeal and transitional
- 65. Consequential amendments

2013, No. 5

AN ACT to provide the following:

- (a) creation of security interests in movable property;
- (b) prioritization of competing interests in movable property;
- (c) creation of a public filing office where notices of security interests may be filed and where they are publicly available for inspection;
- (d) simplified, expedited enforcement against collateral when debtors default;
- (e) repeal of the Chattels Transfer Act 1975 and amendment of other relevant Acts;
- (f) matters incidental to the above. *[5<sup>th</sup> April 2013]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART I  
PRELIMINARY

1. Short title and commencement-(1) This Act may be cited as the Personal Property Securities Act 2013.

(2) This Act commences on a date to be nominated by the Minister.

2. Interpretation - In this Act, unless the context otherwise requires:

“accession” means goods that are installed or affixed with other goods in such a manner that the identity of the goods is not lost;

“account”:

(a) means a right to payment of a monetary obligation, whether or not earned by performance -

(i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; or

(ii) for services rendered or to be rendered; or

(iii) for a policy of insurance issued or to be issued; or

(iv) for a secondary obligation incurred or to be incurred; and

(b) does not include -

(i) rights to payment evidenced by chattel paper or an instrument; or

(ii) deposit accounts; or

(iii) letters of credit or rights to payment or performance under a letter of credit.

“account debtor” means the person who is obligated on an account, secured sales contract or payment intangible;

“administrator”, in relation to insolvency, includes a receiver or liquidator;

“attachment” means completion of all conditions necessary to make a security interest enforceable against the debtor with respect to the collateral;

“building” means a structure, erection, mine or work that is built or constructed on or opened in land;

“building materials”:

(a) means materials that are incorporated into a building, and includes goods attached to a building so that their removal -

(i) would necessarily involve the dislocation or destruction of some other part of the building and cause substantial damage to the building, apart from the loss of value of the building resulting from the removal; or

(ii) would result in weakening the structure of the building or exposing the building to weather damage or deterioration; and

(b) does not include -

(i) heating, air conditioning or conveyancing devices; or

(ii) machinery installed in a building or on land for use in carrying on an activity in the building or on the land; or

(iii) a fixture.

“buyer in the ordinary course of business” means:

(a) a person that buys goods in good faith, without actual knowledge that the sale violates the rights of another person in the goods, in the ordinary course from a person other than a pawnbroker in the business of selling goods of that kind; and

(b) for the purpose of this definition, a person that buys goods is a buyer in the ordinary course of business if the sale to the person conforms with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices.

“chattel paper” means one (1) or more writings that evidence both a monetary obligation and a security interest in, or lease of, specific goods or specific goods and accessions;

“commingled goods” means fungible goods that are physically united with other fungible goods in a way that their identity is lost in a product or mass;

“consignment”:

(a) 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”) who deals in goods of that kind under a name other than that of the consignor and who is not an auctioneer; and

(b) does not include transactions involving goods that are consumer goods of the deliverer.

“consumer goods” means goods used primarily for personal, family, or household purposes, except for motor vehicles;

“crops”:

(a) 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

(b) does not include trees.

“debtor” means a person who owes payment or other performance of a secured obligation, whether or not the person owns or has rights in the collateral, and includes a seller of accounts or secured sales contracts, and a lessee of goods;

“default” means a material failure of a debtor to perform under a security agreement;

“deposit account”:

(a) means a demand, time, savings, passbook, or similar account maintained with a bank; and

(b) does not include investment property or accounts evidenced by an instrument.

“document” means a document of title, or a receipt such as a bill of lading, or warehouse receipt, issued by a person in the business of transporting or storing goods;

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

“fixture”:

(a) means goods that are fixed or are intended to become fixed to immovable property in a manner that causes a property right to arise in the goods; and

(b) does not include building materials, readily removable factory machines, office machines, and domestic appliances.

“fungible goods” means goods of which any unit is by nature or usage of trade, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement;

“goods”:

(a) means all things that are movable when a security interest attaches; and

(b) includes fixtures, crops, hydroponic crops, timber, minerals, and livestock, including the unborn; and

(c) does not include accounts or secured sales contracts, money, documents, or instruments.

“hydroponic crops” means crops, whether matured or otherwise, that are not attached to land by roots;

“instrument”:

(a) means a writing that evidences a right to payment of money, that is not a security agreement or lease, and that in the ordinary course of business may be transferred by delivery with endorsement or assignment; and

(b) includes a bill of exchange or promissory note within the meaning of the Bills of Exchange Act 1976.

“inventory” means goods held for sale or lease, or goods that are raw materials, work in process, or materials used or consumed in a business;

“investment securities” means both a debt security and an equity security, as defined by the Securities Act 2006, whether or not they are evidenced by certificates;

“lease of goods for more than one (1) year” means:

(a) a lease of goods for a stated duration of more than one (1) year; or

(b) a lease of goods for an indefinite term; or

(c) a lease of goods for an initial term of one (1) year or less if the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for more than one (1) year after the lessee first acquired possession of the goods, but the lease does not become a lease for a term of more than one (1) year until the lessee’s possession extends beyond one (1) year; or

(d) a lease of goods for a term of one (1) year or less where the lease provides that it is renewable for any period that would cause the actual term of the lease to exceed one (1) year.

“lessee of goods in the ordinary course of business” means a person who, in good faith and without actual knowledge that the lease is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in the ordinary course from a person in the business of selling or leasing goods of that kind;

“lien”:

(a) means a right in property which is created by an Act, other law, an order of a court or other legal authority, or by the authority of an administrator in an insolvency proceeding; and

(b) does not include a right of retention.

“Minister” means the Minister responsible for Commerce;

“Ministry” means the Ministry responsible for Commerce;

“movable property” means movable things of any nature, intangibles of any nature and fixtures;

“notice”:

(a) means a statement of information about a security interest or lien that is filed in the Registry; and

(b) includes an initial notice, amended notice, continuation notice, termination notice and notice of objection.

“ordinary course of business” means a transaction that conforms with the usual or customary practices of the business in which the person is engaged;

“payment intangible” means a right to receive payment of a monetary obligation, other than an account or a secured sales contract;

“perfection” means optimization of a secured party’s rights in collateral against 3rd parties such as buyers, other secured parties, lien holders and an insolvency administrator;

“proceeds”:

(a) means identifiable or traceable personal property that is derived directly or indirectly from dealing with collateral or the proceeds of collateral and in which the debtor acquires an interest; and

(b) includes -

(i) whatever is acquired upon sale, lease or other disposition of collateral, or whatever is collected on or distributed with respect to collateral; and

(ii) money, property exchanged for the original collateral, property purchased with money proceeds, a deposit account into



which money proceeds are deposited, and a right to insurance or other compensation for loss or damage of the collateral; and

(c) does not include animals merely because they are the offspring of the animals that are collateral.

“purchase money security interest” means a security interest taken by a seller of goods to secure their price or by a person other than the seller who gives value to enable a debtor to acquire goods;

“Registrar” means the Registrar appointed under section 42(1);

“Registry” means the Registry established by section 32, as the electronic filing office for personal property securities, and “filing office” has the same meaning;

“right of retention” means the right of a person who provides services or materials to maintain or enhance the value of goods to retain possession of the goods until the person is paid for the services or materials provided;

“secured party”:

(a) means a lender, seller, or person in whose favor a security interest is created under a security agreement and their assignees; and

(b) includes -

(i) a consignor and a receiver appointed in favour of a secured party; or

(ii) for the purposes of priority determination and filing only, a buyer of accounts or secured sales contracts and a lessor of goods for more than a year.

“secured sales contract” means a contract for the sale of goods on credit that includes a security agreement creating a security interest in the sold goods;

“security interest”:

(a) means a property right in collateral that secures performance of an obligation; and

(b) for the purpose of perfection and priority, includes the interests of a buyer of accounts or secured sales contracts and a lessor of goods for more than a year.

“serial number”, in relation to a motor vehicle, means any number or letter, or any combination of numbers or letters, shown on the body of a motor vehicle.

3. Overview - In this Act:

- (a) this Part deals with preliminary matters; and
- (b) Part II deals with the creation of a security interest, the perfection of a security interest, and establishing priority of competing security interests in movable property; and
- (c) Part III deals with creating an electronic filing Registry where notices of security interests may be filed and where such notices are publicly available for inspection; and
- (d) Part IV deals with enforcement of security interests and provides for simplified, expedited enforcement against collateral when a debtor defaults; and
- (e) Part V deals with pre-emption of this Act over other Acts creating charges, transition provisions relating to transactions existing at the commencement of this Act, regulation making powers and offences and penalties.

4. Act binds Government - This Act binds the Government.

5. Application-(1) This Act applies to the following:

- (a) transactions that secure an obligation with collateral, regardless of the form of the agreement or the terminology used, including pledge, hire-purchase, conditional sale, company charge, chattel mortgage, assignment and the like, and whether the collateral is owned by the secured party or the debtor;
- (b) liens in movable property, but only for the purposes of priority determination and filing of a notice;
- (c) the sale of accounts and secured sales contracts;

- (d) the lease of goods for more than one (1) year, but only for the purposes of priority determination and filing of a notice;
  - (e) consignments.
- (2) This Act applies without regard to the form or terminology of an agreement, and whether ownership of the collateral is held by the secured party or the debtor.
- (3) The retention of title by a seller of goods has no effect other than the taking of a security interest in the goods.
- (4) This Act does not apply to the following:
- (a) transfers of interest in real property, except for transfer of interests in crops, timber to be cut, or minerals to be extracted;
  - (b) sales of account receivable or secured sales contract as part of the sale of a business out of which they arose;
  - (c) assignments for collection action only;
  - (d) transfers of claim for compensation of employees;
  - (e) interests in vessels that are subject to the Shipping Act 1998;
  - (f) interests that are subject to the International Companies Act 1988;
  - (g) interests that are subject to the Segregated Fund International Companies Act 1988.

## PART II SECURITY INTEREST

### *Division 1 – Security interest and secured obligation*

6. Obligations - A security interest may secure one (1) or more of the following types of obligations:
- (a) described specifically or generally;
  - (b) monetary or non-monetary;
  - (c) pre-existing, present or future;
  - (d) a line of credit.

7. Security interest in consumer goods - A security interest may not be taken in the consumer goods of a debtor except for a purchase money security interest in the consumer goods.

8. Description of collateral-(1) A general or specific description of collateral in a security agreement or notice is sufficient if it:

- (a) identifies collateral by item or kind 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
  - (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) To be sufficient, a description of consumer goods must have a specific description.

9. Attachment of security interest-(1) A security interest attaches to collateral and becomes enforceable only if:

- (a) each debtor has signed a security agreement that describes the collateral; and
  - (b) value has been given by the secured party; and
  - (c) a debtor has rights in the collateral.
- (2) Subsection (1) does not apply if the parties to a security agreement have agreed that a security interest attaches at a later time, in which case the security interest attaches at the time specified in the agreement.
- (3) For the purposes of subsection (1), a debtor has rights in goods that are leased to the debtor, consigned to the debtor, or sold to the debtor under a conditional sale agreement (including an agreement to sell subject to retention of title) no later than when the debtor obtains possession of the goods.
- (4) Unless otherwise agreed, a security interest automatically attaches to proceeds.

(5) To avoid doubt, a reference in a security agreement to a floating charge is not an agreement that the security interest created by the floating charge attaches at a later time than the time specified in subsection (1).

10. Notice to account debtors not required - When collateral consists of present or future accounts, secured sales contracts or payment intangibles, notice to the account debtors is not required as a condition of attachment or perfection of the security interest.

11. Continuity of security interest - A security interest continues in collateral despite sale, lease, licence, exchange, or other disposition of the collateral, except as otherwise provided in this Act or agreed upon by the parties.

12. Request for accounting or statement of account-(1) A debtor may request:

- (a) an accounting of the unpaid obligations secured by collateral; or
- (b) that a secured party approve or correct a list of what the debtor believes to be the collateral securing an obligation; or
- (c) that a secured party 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.

(2) A secured party must comply with a request under subsection (1) within two (2) weeks after receipt.

(3) A debtor is entitled without charge to one (1) response to a request under this section during any 6-month period.

(4) The secured party may require payment of a reasonable charge for each additional request within a 6-month period.

(5) An account debtor that has received notification of an assignment of the account is entitled to receive from the assignee a signed record that releases the account debtor from any further obligation to the assignee, if:

- (a) there is no outstanding secured obligation; and

- (b) the assignee has no commitment to make advances, incur obligations, or give value.
- (6) The release must be sent as soon as reasonably practicable, but not more than 10 days after the secured party receives a demand from the debtor.
- (7) Subsections (5) and (6) do not apply to the sale of an account or chattel paper.

*Division 2 – Security agreement*

13. Security agreement-(1) A security agreement must be in written form or in an electronic form that may be printed, and it may consist of one (1) or more writings or electronic records that, taken together, establish the intent of the parties.

(2) A security agreement is effective between the parties and against purchasers, creditors and lien holders, except as otherwise provided in this Act.

(3) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

(4) A security agreement may provide for future advances.

(5) Subject to section 20, a security interest has the same priority in respect of all advances, including future advances.

(6) A security agreement may provide that the secured party can accelerate payment or performance by the debtor when:

- (a) the debtor is in default; or
- (b) the secured party reasonably believes that the collateral is at risk; or
- (c) the secured party reasonably believes that payment or other performance is at risk.

(6) In this section, “at risk” means that the secured party has commercially reasonable grounds to believe that:

- (a) the collateral has been or will be destroyed, damaged, endangered, disassembled, removed, or concealed contrary to the provisions of the security agreement; or

- (b) the debtor is or will be unable to pay or perform its obligations under the security agreement.
- (7) The secured party has the burden of proving the existence of any grounds under subsection (6).

*Division 3 – Perfection of security interest*

14. **Perfection of security interest** - A security interest is perfected when it has attached to the collateral and one (1) or more of the following means of perfection is or are completed, subject to the qualifications in section 15:

- (a) filing of a notice;
- (b) possession of the collateral by the secured party or its agent;
- (c) control of the collateral by the secured party or its agent;
- (d) automatic perfection as provided in this Act.

15. **Means of perfection in special cases** - In all cases, a notice must be filed in the Registry to perfect a security interest with the following qualifications:

- (a) perfection occurs automatically upon attachment of the security interest in the case of a purchase money security interest in consumer goods of the debtor;
- (b) a security interest in goods, instruments, documents, or secured sales contracts may be perfected by the secured party's taking possession;
- (c) a security interest in money may be perfected only by the secured party's taking possession of the money, except for cash proceeds;
- (d) a security interest, other than a security interest in money, perfected by possession under this section may also be perfected by registering a notice before, during, or after a period of possession by a secured party;
- (e) a security interest in a deposit account may be perfected only by the secured party's control of the deposit account;

- (f) with regard to proceeds -
  - (i) upon disposition of collateral, a security interest attaches to proceeds of the collateral and is continuously perfected if the security interest in the collateral was perfected;
  - (ii) the security interest in proceeds becomes unperfected 15 days after the debtor receives the proceeds unless they are identifiable cash proceeds or are described by the collateral description in the filed notice;
  - (iii) the time of registration, possession or perfection of a security interest in original collateral is also the time of registration, possession or perfection of its proceeds;
- (g) a lessor or a buyer of accounts or secured sales contracts may perfect its interest in the same manner as for a security interest;
- (h) a security interest in a motor vehicle may be perfected by filing a notice that describes the motor vehicle generally or by serial number. As against a buyer or lessee of the motor vehicle, however, priority requires description by serial number.

**16. Meaning of “possession” in certain cases-**(1) For the purposes of this Act, a person takes possession of an investment security if:

- (a) for an investment security that is evidenced by a security certificate, the person takes physical possession of that certificate; or
- (b) for an investment security that is traded or settled through a clearing house or securities depository, the clearing house or securities depository, records the interest of the person in the investment security; or
- (c) for an investment security that is not evidenced by a security certificate and that is not traded or settled through a clearing house or securities



depository, the records maintained by the issuer, or on behalf of the issuer, record the interest of the person in the investment security; or

(d) for an investment security that is held by a nominee, the records of the nominee record the interest of the person in the investment security.

(2) For the purposes of this Act, a person takes possession of a negotiable instrument if:

(a) the person takes physical possession of the negotiable instrument; or

(b) for a negotiable instrument that is traded or settled through a clearing house or securities depository, the clearing house or securities depository, records the interest of the person in the negotiable instrument.

(3) For the purposes of this Act, a secured party is not in possession of collateral that is in the actual or apparent possession or control of the debtor or the debtor's agent.

17. Perfection by different means-(1) A security interest is perfected continuously if it is first perfected in 1 manner and later perfected in another manner, without a period when it is not perfected.

(2) For the purposes of subsection (1), a continuously perfected security interest is to be treated at all times as perfected by the method by which it was originally perfected.

18. Assignment of security interest - If a secured party assigns a perfected security interest, a notice need not be filed under this Act to continue perfection of the security interest.

19. Lapse of perfection - When a filing period lapses as a result of a failure to file a continuation notice by the lapse date, perfection of the security interest also lapses, unless perfection is achieved by another means prior to the lapse.

*Division 4 – Priority*

20. **General priority rules-**(1) Security interests and interests of lien holders in the same collateral have priority according to time of filing of a notice or perfection by other means, except as otherwise provided in this Act.

(2) Except as otherwise provided in this Act, priority is measured from the earlier to occur of filing of a notice or perfection by other means, provided that there is no time thereafter when a filed notice is not effective or perfection does not exist.

(3) The first security interest to attach to collateral has priority among security interests for which there is no effective filed notice or other form of perfection.

(4) If a perfected security interest secures an obligation by the secured party to make future advances, the rights of a lien holder have priority over the security interest with respect to advances made:

- (a) after the secured party has actual knowledge of the interest of the lien holder; or
  - (b) more than 20 days after a notice of the interest of the lien holder is filed in the filing office,
- whichever occurs first.

21. **Priority continues in proceeds** - The priority of a security interest in proceeds is the same as the priority of the security interest in the original collateral.

22. **Purchase of secured sales contracts or instruments** - A buyer in the ordinary course of business of secured sales contracts or instruments has priority over a secured party's security interest in the secured sales contracts or instruments if such buyer:

- (a) gives new value; and
- (b) takes possession of the secured sales contracts or instruments; and
- (c) if the secured sales contracts or instruments do not indicate an assignment to the secured party.

23. **Transferee exceptions-**(1) A transferee takes collateral free of a security interest if the transferee gives value and takes delivery of the collateral without knowledge of the security interest and before a notice is filed or the security interest is perfected.

(2) A buyer or lessee of goods in the ordinary course of business takes free of a security interest, even if the security interest is perfected and the buyer or lessee knows of its existence, and this subsection prevails over section 3 of the Mercantile Law Act 1975 and section 25 of the Sale of Goods Act 1975 where this section applies and either or both of those sections apply.

(3) A buyer or lessee of a motor vehicle takes it free of a security interest if the buyer or lessee does not know of the security interest and if the serial number is not included on a filed notice of security interest.

(4) A buyer takes free of a perfected security interest in goods if the secured party consents to the sale by the debtor.

(5) A person who receives cash for value takes free of a perfected security interest in the cash.

(6) A lien holder who takes control of collateral or causes collateral to be seized before a security interest is perfected takes free of the security interest.

(7) A court or a liquidator of an insolvent company that takes physical custody or control of assets before a security interest is perfected in them takes free of the security interest.

24. **Purchase money security interest-**(1) A purchase money security interest in equipment has priority over a conflicting security interest if the purchase money security interest is perfected when the debtor receives possession of the equipment or within 10 days from receipt.

(2) A purchase money security interest in goods or their proceeds that is perfected not later than 10 days from the date the debtor obtains possession of the goods has priority over the rights of a buyer, lessee, or lien holder which arise between the time the security interest attaches and the time the notice is filed.

(3) A perfected purchase money security interest in inventory or livestock has priority over a conflicting perfected security interest in the same inventory or livestock if:

- (a) the purchase money security interest is perfected when the debtor receives possession of the inventory or livestock; and
- (b) not later than 10 days after the debtor receives possession, the purchase money secured party gives written notice to the holder of the conflicting perfected security interest in the same types of inventory or livestock.

(4) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(5) In a transaction other than a consumer-goods transaction, a purchase money security interest does not lose its status even if:

- (a) the purchase-money collateral also secures an obligation that is not a purchase-money obligation; or
- (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.

25. Priority in fixtures-(1) A security interest may continue in goods that become fixtures.

(2) A security interest in fixtures is subordinate to rights in the immovable property to which it is affixed.

(3) If the right in the immovable property arose before the goods became fixtures, subsection (2) does not apply if a notice of the security interest in the goods that become fixtures has been filed in the Registry:

- (a) on or before the day the goods became fixtures; or
- (b) within 10 days after the goods became fixture.

(4) If the right in the immovable property arose after the goods became fixtures, subsection (2) does not apply only if the filing of the notice of the security interest in the fixtures

preceded registration of the rights in or seizure of the immovable property.

(5) A secured party who has the right under this Act to remove goods from land must exercise the right of removal in a manner that:

- (a) causes no greater damage or injury to the land and to other property situated on it; or
- (b) puts the occupier of the land to greater inconvenience than is necessarily incidental to the removal of the goods.

(6) A person, other than the debtor, who has an interest in the land at the time when the goods subject to the security interest are affixed to the land is entitled to reimbursement for any damages to the interest of the person in the land caused during the removal of the goods, other than reimbursement for reduction in the value of the land caused by the absence of the goods removed or by the necessity of replacement.

26. Crops-(1) Except as otherwise provided in this Act, a security interest in crops is a security interest in the crops while growing and afterwards when cut or separated from the soil.

(2) For the purposes 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 land where the crops were grown or on any other land or premises.

(3) A security interest in crops does not prejudicially affect the rights of a lessor or mortgagee of land on which the crops are growing if:

- (a) those rights existed at the time the security interest was created; and
- (b) the lessor or mortgagee has not consented in writing to the creation of the security interest.

(4) 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.

(5) An unperfected security interest in crops is subordinate to the rights of a judgment creditor who causes the land to be seized in order to enforce a judgment.

27. Right of retention - A right of retention in goods has priority over a perfected security interest in the goods if the right of retention:

- (a) arises in the ordinary course of business of the person in possession of the goods; and
- (b) arises under an Act that provides that the lien therein created has priority; and
- (c) the person who provided the materials or services did not, at the time the person provided those materials or services, know that the security agreement relating to the security interest contained a provision prohibiting the creation of a lien by the debtor.

28. Priority in accessions-(1) In this section:

“other goods” means goods to which an accession is installed or affixed;

“the whole” means an accession and the goods to which the accession is installed or affixed.

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

(3) If a security interest:

- (a) is perfected when the collateral becomes an accession; or
- (b) is perfected under section 24,

the security interest remains perfected in the accession and has priority over a person with an interest in the other goods or the whole.

(4) A secured party who has the right under this Act to remove an accession must exercise the right of removal in a manner that:

- (a) causes no greater damage or injury to the whole or to the other goods; or
- (b) puts the person in possession of the whole to greater inconvenience,

than is necessarily incidental to the removal of the accession.

(5) A person, other than the debtor, who has an interest in the other goods at the time when the goods subject to the security interest become an accession, is entitled to

reimbursement for any damages to the interest of the person in the whole that is caused during the removal of the accession, other than reimbursement for reduction in the value of the whole that is caused by the absence of the accession or by the necessity of replacement.

(6) The person entitled to reimbursement under subsection (5) may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement.

(7) The secured party may apply to a court for one (1) or more of the following:

- (a) an order determining the person who is entitled to reimbursement under this section;
- (b) an order determining the amount and kind of security to be provided by the secured party;
- (c) an order specifying the depository for the security;
- (d) an order authorising the removal of the goods without the provision of security for reimbursement.

(8) A person who has an interest in the whole that is subordinate to a security interest in an accession as provided in this section may, before the accession has been removed from the whole by the secured party, retain the accession on payment to the secured party of the lesser of:

- (a) the amount secured by the security interest entitled to priority; or
- (b) the market value of the accession if the accession were removed from the other goods.

(9) The secured party who has a right to remove the accession from the whole must give a notice of the secured party's intention to remove the accession to each person:

- (a) who is known by the secured party to have an interest in the whole; or
- (b) who has registered a notice -
  - (i) using the name of the debtor and mentioning the other goods; or
  - (ii) according to the serial number of the other goods if they are serial numbered vehicles.

- (10) The notice under subsection (9) must contain:
  - (a) the name and address of the secured party; and
  - (b) a description of the goods to be removed; and
  - (c) the amount required to satisfy the obligations secured by the security interest; and
  - (d) the estimated market value of the accession; and
  - (e) a description of the other goods; and
  - (f) a statement of intention to remove the accession unless the amount mentioned in subsection (9) is paid on or before a specified day that is not less than five (5) days after the notice is given.
- (11) A notice under subsection (9) must be given:
  - (a) at least 15 days before removal of the accession; and
  - (b) by delivery addressed to the address of the person to be notified as it appears on the notice.

29. *Commingled goods*-(1) A security interest may not be created in commingled goods.

(2) If collateral to which a security interest has attached becomes commingled, the security interest attaches to the product or mass.

(3) If a security interest is perfected before the collateral becomes commingled, the security interest continues to be perfected in the product or mass.

(4) The priority of the security interest under subsection (3) in the product or mass is measured from the time of perfection of the security interest in the collateral that became commingled, except as limited by subsection (5).

(5) If more than one (1) security interest attaches to the product or mass, the following rules determine priority:

- (a) a security interest that is perfected has priority over a security interest that is unperfected at the time the collateral becomes commingled goods;
- (b) the first security interest to attach to the product or mass has priority among unperfected security interests;



- (c) if more than one (1) security interest is perfected, the perfected security interests rank equally in proportion to the value of the collateral at the time it became commingled.

30. Subordination-(1) A secured party may, in a security agreement or other agreement, subordinate its security interest to any other interest, and the subordination 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 (1) of a class of persons for whose benefit the subordination was intended.

(2) A subordination of security interest does not need to be registered to be effective.

31. **Meaning of “knowledge”**-(1) For the purposes of this Act:

- (a) an individual knows or has knowledge of a fact in relation to a particular transaction when that individual has actual knowledge of the fact or receives a notice stating the fact; and
- (b) an organisation knows or has knowledge of a fact in relation to a particular transaction when -
  - (i) the person within the organisation with responsibility for matters to which the transaction relates has actual knowledge of the fact; or
  - (ii) the organisation receives a notice stating the fact; or
  - (iii) the fact is communicated to the organisation in such a way that it would have been brought to the attention of the person with responsibility for matters to which the transaction relates if the organisation had exercised reasonable care; and
- (c) a government department knows or has knowledge of a fact in relation to a particular transaction when that fact has been brought to the attention of a senior officer of the government department with

responsibility for the matters to which the fact relates, under circumstances in which a reasonable person would take cognisance of it.

(2) Registration of a notice in the Registry is not constructive notice or knowledge of its existence or contents to any person.

### PART III FILING

#### *Division 1 – Registry operation*

32. Establishment of electronic filing Registry-(1) The Registry for electronic filing of personal property securities is established by this section within the Ministry for the purposes of this Act.

(2) The functions of the Registry are:

- (a) to provide electronic means for filing of notices of security interest and liens; and
- (b) to provide for searching for notices; and
- (c) to keep and maintain the electronic records as official or public records for the purpose of this Act; and
- (d) to receive and file any notice of a security interest or other interest in movable property or any notice of lien in movable property, required under this Act; and
- (e) to carry out any other functions given to it under this Act.

33. Public record-(1) Information contained in a filed notice is a public record.

(2) Indices and other records created by the Registry with respect to notices are public records.

(3) A person may inspect notices in the Registry.

#### *Division 2 – Notices to be filed*

34. Initial notice-(1) An initial notice of security interest is sufficient if it:

- (a) identifies the secured party or an agent of the secured party by name and provides an address; and

- (b) describes the collateral covered by the notice, and if the collateral is a fixture, the notice must describe the immovable property to which a fixture is to be affixed.
- (2) A debtor must authorise the filing of an initial notice by signing a security agreement or a separate agreement as follows:
  - (a) a signature may be any tangible indication of the debtor's intent to enter the agreement; and
  - (b) the debtor's authorization -
    - (i) may not be contained in the notice; and
    - (ii) may not be disclosed to the Registrar; and
    - (iii) may be given after filing.
- (3) By signing a security agreement, a debtor authorises the filing 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.
- (4) A notice may be filed before a security agreement is concluded or before a security interest attaches to collateral.
- (5) A notice may relate to one (1) or more security agreements.
- (6) A notice of lien may be filed by the following:
  - (a) a lien holder without the consent of the lienee;
  - (b) on the property of an insolvent company, the court or an administrator appointed by the court; or
  - (c) on the property of a judgment debtor, by the court; or
  - (d) on the movable property of a delinquent taxpayer, by Government.
- (7) A notice substantially complying with the requirements of this Division is effective unless it is seriously misleading by not providing the identification number of the debtor.

35. Name of debtor and secured party-(1) A notice sufficiently provides the name of a debtor if the name appears as follows in the notice:

- (a) if the debtor is a natural person, Samoan citizen or resident and a member of the Samoa National

Provident Fund, the name as it appears on his or her certificate of membership in the Fund, together with his or her birth date;

- (b) if the debtor is a natural person, Samoan citizen or resident and not a member of the Samoa National Provident Fund -
  - (i) the name as it appears on his or her birth certificate or marriage certificate, together with his or her birth date; or
  - (ii) if the debtor does not have a birth certificate or marriage certificate, the name as it appears on his or her driver's licence, together with his or her birth date;
- (c) if the debtor is a natural person, Samoan citizen or resident and has none of the types of identification documents under paragraphs (a) to (c), the name as it appears on any other type of identification document registered with or issued by Government, together with his or her birth date;
- (d) if the debtor is a natural person, Samoan citizen and is a rightful holder of one (1) or more Matai titles in accordance with the Land and Titles Act 1981, then the Matai titles must also be provided on the notice;
- (e) if the debtor is a natural person and not a Samoan citizen, the debtor's name as provided in his or her passport;
- (f) if the debtor is an entity incorporated by law in Samoa, the name of the debtor as shown on the registration records of the entity;
- (g) if the debtor is a distinct legal entity which is not registered by law, the name of the entity as it appears on the document creating the entity;
- (h) if the debtor is a foreign entity authorised to do business under a law of Samoa, the name of the debtor as shown on its certificate to do business in Samoa;

- (i) if the debtor is a foreign entity not authorised to do business under a law of Samoa, the name of the debtor as shown on the registration document in the country of registration.
- (2) A notice that sufficiently provides the name of the debtor is not rendered ineffective by the presence or absence of a trade name, alias name or other name of the debtor.
- (3) A notice that provides only the debtor's trade name, alias name or other name does not sufficiently provide the name of a debtor.
- (4) A notice may provide the name of more than one (1) debtor and the name of more than one (1) 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.

36. **Effectiveness of notice-**(1) A notice is effective at the time it is discoverable on the records of the Registry.

(2) A notice is effective for five (5) years unless a continuation notice is filed before the period lapses.

(3) When the period lapses, a notice becomes ineffective, and the security interest that was perfected by the notice becomes unperfected unless it is perfected by other means.

37. **Effects of change of circumstances-**(1) A filed notice remains effective with respect to collateral that is sold, exchanged, leased, licensed, or 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 a filed notice becomes seriously misleading, the notice is effective to perfect a security interest in collateral acquired by the debtor before or within six (6) months after the change only if an amendment to the notice is filed within six (6) months of the change that changes the name.

(3) Except as provided in subsection (2), a notice remains effective if, after the notice is filed, a change of circumstances renders the notice seriously misleading.

38. Amendment of notice-(1) An initial notice may be amended and an amended notice must:

- (a) identify the initial notice by its file number; and
- (b) identify each secured party who authorises the amendment; and
- (c) provide all of the information required for an initial notice.

(2) An amended notice that adds collateral or adds a debtor must be authorised by the debtor by signing the security agreement or other written agreement.

(3) An amendment that adds a debtor or adds collateral is effective as to the added debtor or added collateral only from the date of the registration of the amendment.

(4) An amended notice is effective only as to each secured party who authorises it.

(5) An amended notice that adds collateral or a debtor is effective as to the added collateral or debtor from the date of filing of the amended notice.

(6) By signing a security agreement, 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.

(7) The registration of an amendment does not extend the period of effectiveness of a notice.

39. Continuation-(1) The period of effectiveness of a notice may be continued by filing a continuation notice that:

- (a) identifies the initial notice by its file number; and
- (b) identifies each secured party who authorises the continuation notice.

(2) A continuation notice may be filed only within six (6) months before the expiration of the effective period of the notice.

(3) When a continuation notice is filed within six (6) months, the effectiveness of the initial notice is continued for five (5) years commencing on the day on which the notice would have become ineffective in the absence of the registration.

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

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

40. Termination-(1) The effectiveness of a notice may be terminated by filing a termination notice that:

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

(2) Within 30 days after a secured party receives a written demand from the debtor, the secured party must file a termination notice if:

- (a) there is no outstanding secured obligation and no commitment to make an advance or give value;  
or
- (b) the debtor did not authorise filing of the initial notice.

(3) If a secured party that is obligated to file a termination under this section fails to file the termination within 30 days after receiving a written demand, the debtor may commence an action against the secured party to compel the secured party to file the termination.

(4) If the secured party subsequently files the termination, the secured party is liable to the debtor for all reasonable costs and expenses incurred by the debtor in pursuing the action against the secured party under subsection (3).

(5) Within 30 days after a lien holder receives a written demand from the debtor, the lien holder must file a termination notice if full payment of past due amounts, penalties and interest has been made.

(6) A termination notice terminates effectiveness of the initial notice as to each authorising secured party or the lien holder only if the termination statement is authorised in a signed record by that secured party.

41. Notice of objection-(1) A person may file a notice of objection to a notice of security interest that identifies the person as a debtor if the person believes that the notice is inaccurate or was wrongfully filed.

(2) A notice of objection must:

- (a) identify the notice to which it relates by its file number; and
- (b) name the person who files the notice of objection; and
- (c) provide the basis for the person's belief that the notice of security interest is inaccurate or was incorrectly or wrongfully filed.

(3) Filing of a notice of objection does not affect the effectiveness of a notice of security interest.

### *Division 3—Authority and duties of the Registrar*

42. Appointment of the Registrar-(1) The Minister must appoint a person to hold office as the Registrar to administer the day-to-day activities of the Registry.

(2) The functions of the Registrar are:

- (a) to administer the day-to-day activities and functions of the Registry; and
- (b) to ensure that all obligations of the Ministry under this Act are fully discharged by the creation and businesslike maintenance of an electronic information system that provides for the filing of notices of security interests and notices of the interests of lien creditors, and for the search of such notices by any person; and
- (c) to carry out the functions provided under this Act.

(3) A person must not have a claim against the Registrar, or Ministry or Government for errors in Registry records committed by a person who files a notice, or for failure to



provide registry services for reasons beyond the control of the Registrar, Ministry or Government.

(4) The functions and duties of the Registrar are administrative, and by filing a notice or refusing to file a notice, the Registrar does not determine the sufficiency, correctness, authenticity, or validity of the notice or any information contained in the notice.

(5) The filing of a notice does not create a security interest in collateral and does not provide evidence that a security interest in collateral exists.

43. Registrar duties-(1) For each notice filed, the Registrar must:

- (a) assign it a unique file number; and
  - (b) create a record that bears the number assigned to the initial notice and the date and time of filing; and
  - (c) maintain the record for public inspection.
- (2) The Registrar must ensure that the Registry carries out the following:
- (a) index notices by the name of the debtor and, for notices containing a serial number of a motor vehicle, by serial number; and
  - (b) return a copy of the electronic record of the notice, to include the file number and the date and time of filing; and
  - (c) maintain the capability to retrieve a record by the name of the debtor, by the file number assigned to the initial notice and, for notices containing the serial number of a motor vehicle, by serial number; and
  - (d) maintain records of lapsed notices for a period of 10 years from the date of lapse.

44. Refusal to file notice-(1) The Registrar may refuse to file a notice because:

- (a) for an initial notice, it does not provide the name of a debtor; or
- (b) for an amended notice, it does not -
  - (i) provide the name of a debtor; or

- (ii) provide the file number of the initial notice; or
    - (iii) identify an initial notice for which effectiveness has lapsed; or
    - (iv) identify an authorising secured party;or
  - (c) for a continuation notice, it -
    - (i) does not provide the file number of the initial notice; or
    - (ii) does not identify an initial notice for which effectiveness has lapsed; or
    - (iii) was not presented within the permitted period of six (6) months; or
    - (iv) does not identify an authorising secured party; or
  - (d) for a termination notice, it -
    - (i) does not provide the file number of the initial notice; or
    - (ii) identifies an initial notice that has lapsed; or
    - (iii) does not identify an authorising secured party; or
  - (e) less than the full filing fee is tendered, or no arrangement has been made for payment of fees by other means.
- (2) If the Registrar refuses to file a notice, the Registrar must promptly communicate the fact of and reason for the refusal to the person who presented the notice.

#### *Division 4 – Information from Registry*

45. Search of filing office records and certified report-(1)  
The Registrar must ensure that the Registry communicates the following information to a person who requests it:
- (a) whether there is in the Registry any effective notice that designates a particular file number, debtor name or vehicle serial number;
  - (b) the file number, and the date and time of filing of a notice;

- (c) the name of a debtor and the name and address of each secured party on a notice;
  - (d) any other information contained in a notice.
- (2) If requested, the Registrar must issue a certified report of the results of a search that is an official record of the Registry and the certified report is admissible in a court without extrinsic evidence of its authenticity.
- (3) The purpose of information provided by the Registry is only to give notice of the possible existence of a security interest in collateral.
- (4) For more complete information, the person who requested the information may inquire of the secured party and the secured party may disclose the following:
- (a) the nature and amount of the secured obligation;
  - (b) a detailed description of the collateral;
  - (c) the remaining balance on the obligation;
  - (d) whether or not the secured party has an obligation to make future advances under its agreement with the debtor;
  - (e) the duration of the obligation under the security agreement;
  - (f) the identity of all debtors and secured parties who are parties to the security agreement.

#### *Division 5 – Filing fees*

46. Fees set by regulation-(1) The fees for filing a notice and for requesting a certified search report are as prescribed by regulations to recover the costs of operation.

- (2) No fee is required:
- (a) for access to examine the records of the filing office by electronic means or for other services; or
  - (b) for filing of a termination notice or a notice of objection.

### PART IV ENFORCEMENT OF SECURITY INTERESTS

#### *Division 1 – Secured Party's Rights*

47. Secured party rights upon default by debtor-(1) If the debtor defaults on its obligation to pay or perform, or upon the

occurrence of another event of default, the security interest becomes enforceable.

- (2) Upon default, the secured party has the following rights:
- (a) the rights and remedies set forth in the security agreement;
  - (b) the right to possession or control of the collateral, even if the security agreement is silent about possession or control;
  - (c) the right to dispose of the collateral;
  - (d) other rights or remedies provided in this Act or any other Act.

(3) Where the collateral is goods of a kind that cannot be readily moved from the debtor's building 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 building in any manner by which a police officer, acting pursuant to a writ of execution, may seize without removal, if the secured party's interest is perfected by registration.

(4) Where subsection (3) applies, the secured party may dispose of collateral on the debtor's building, but must not cause the person in possession of the building any greater inconvenience and cost than is necessarily incidental to the disposal.

(5) Subject to any other Act or law to the contrary, where the same obligation is secured by an interest in land and a security interest to which this Act applies, the secured party may:

- (a) without limiting the secured party's rights, remedies and duties with respect to the land, proceed pursuant to this Part as to the personal property; or
- (b) proceed as to both the land and the personal property, in which case -
  - (i) the secured party's rights, remedies and duties with respect to the land apply to the personal property, with any necessary modification, as if the personal property were land; and

(ii) this Part does not apply.

(6) Where the secured party sells the land and personal property, for the purpose of distributing the amount received from the sale of the land and personal property where the purchase price is not allocated to the land and the personal property separately, the amount of the total price that is attributable to the sale of the personal property is the market value of the personal property at the time of sale.

**48. Recovery without judicial process in certain cases-(1)**

Upon default, a secured party with a security interest in an account, secured sales contract or payment intangible:

- (a) may instruct the account debtor to make payment to the secured party; and
- (b) must apply such payment to satisfaction of the obligation secured by the security interest after deducting the secured party's reasonable collection expenses.

(2) Upon default, a secured party with a security interest in a document that is perfected by possession may proceed as to the goods covered by the document.

(3) If so agreed, and in any event after default:

- (a) a bank with a perfected security interest in a deposit account maintained by the bank may apply the balance of the deposit account to the obligation secured by the deposit account; and
- (b) in other cases, a secured party that has a security interest in a deposit account perfected by control may instruct the bank to pay the balance of the deposit account to the secured party's account.

(4) The secured party may act under this section without judicial process, despite any other provision of this Act.

**49. Expedited possession by secured party-(1)** In cases not covered by section 50, the secured party may take possession or control of collateral without legal process if:

- (a) the security agreement so provides; or
- (b) the debtor has agreed in writing after default; and

- (c) the possession or control can be taken without a breach of the peace.
- (2) In this section, “breach of the peace” includes:
- (a) entering the building of the debtor without permission; or
  - (b) resorting to physical violence or intimidation; or
  - (c) being accompanied by a police officer when taking possession or confronting the debtor.
- (3) If the collateral is a fixture, the secured party may remove it from the immovable property to which it is fixed without judicial process only if the debtor has agreed in writing after default and if the secured party complies with section 26.
- (4) If, upon default, the secured party cannot take possession or control of collateral without breach of the peace, or if the debtor does not agree after default to removal of collateral that is a fixture, the secured party may proceed as follows:
- (a) the secured party is entitled to an expedited hearing upon application for a pre-judgment order granting the secured party possession of the collateral (the application must include a statement by the secured party, under oath or affirmation, verifying the existence of the security agreement attached to the application and identifying at least one (1) then existing event of default by the debtor under the security agreement);
  - (b) the secured party must serve a copy of the application on the debtor, including a copy of all documents and supporting evidence submitted to the court;
  - (c) the court must schedule the hearing under paragraph (a) at the earliest available time; but no hearing is to be conducted without service on the debtor of the application and reasonable notice of the hearing unless -
    - (i) the court finds that the secured party has made reasonable efforts to serve the application on the debtor and that such efforts have not been successful; or

- (ii) the court finds that the hearing should be conducted without delay to prevent damage to the collateral, substantial loss of the collateral's value or impairment of the secured party's right to possession;
- (d) if the court finds, after hearing, that it is probable that a default has occurred under the security agreement and that the secured party has a right to take possession of the collateral, the court must enter a pre-judgment order -
  - (i) granting the secured party possession of the collateral pending final judgment or further order of the court; and
  - (ii) directing, if required, the debtor to take such action as the court deems necessary and appropriate so that the secured party may take possession;
- (e) if the court enters an order under paragraph (d) granting the secured party pre-judgment possession of the collateral, it must also, upon application by the secured party, enter an order permitting the pre-judgment sale or other disposition of the collateral under section 52 unless the collateral is rare or unique, or otherwise of such a nature that it is unlikely to be replaceable;
- (f) for a disposition under this subsection, the secured party must retain possession of the proceeds of the disposition pending final judgment or further order of the court unless the court, in its sole discretion, orders that the proceeds be held in escrow;
- (g) a secured party who takes possession of collateral under an order issued under paragraph (d) must use reasonable care in the custody and preservation of collateral in the secured party's possession, pending disposition under paragraph (e) or a final judgment or further order of the court;

(h) unless otherwise agreed, while the collateral is in the possession of the secured party, reasonable expenses may be charged to the debtor and secured by the collateral, including the cost of any insurance, and the payment of taxes or fees associated with the collateral.

(5) Despite subsection (4), a secured party may elect to proceed to judgment with respect to collateral and to enforce the judgement under the Judgment Summonses Act 1965.

(6) A person who willfully and forcibly obstructs a secured party or a secured party's agent from lawfully exercising any power to take possession of collateral commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a period not exceeding three (3) years, or both.

#### *Division 2 – Disposition or retention of collateral*

50. Right to dispose of collateral-(1) After default, a secured party may sell, lease, license or otherwise dispose of a collateral, publicly or privately.

(2) A collateral may be sold in separate lots or as a whole.

(3) A secured party may buy at any public or private sale.

51. Commercial reasonableness required-(1) In disposing of collateral, the secured party must act in a commercially reasonable manner.

(2) A disposition is not commercially unreasonable merely because a better price could have been obtained by disposition at a different time or by a different method from the time and method adopted by the secured party.

(3) A disposition is commercially reasonable if the secured party disposes of the collateral in conformity with commercial practices among dealers in that type of property.

(4) If a method of disposition of collateral has been approved in any legal proceeding, it is conclusively deemed to be commercially reasonable, but no such approval is required by this Act.



52. Notice of disposition-(1) At least 10 days prior to disposition of the collateral, the secured party must give a notice of disposition to the following:

- (a) the debtor;
  - (b) any other secured party or lien holder who, five (5) days before the date notice is given, held a security interest or lien in the collateral that was perfected by filing;
  - (c) any other person from whom the secured party received notice of a claim of an interest in the collateral if the notice was received before the secured party gives notice of the proposed disposition.
- (2) The debtor may waive the right to be notified.
- (3) A notice of disposition is sufficient if the notice sets out the following:
- (a) identifies the debtor and the secured party;
  - (b) describes the collateral;
  - (c) states the method of intended disposition;
  - (d) states the time and place of a public sale, or 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 other private disposition of the collateral is to be made.
- (4) The requirement for notice of disposition described in subsection (1) does not apply if:
- (a) the collateral is perishable; or
  - (b) the secured party believes on reasonable grounds that the collateral will decline speedily in value if not disposed of as soon as practicable; 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) 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 of disposition requirements; or
- (f) for any other reason, a court, on application by one (1) party only, is satisfied that a notice is not required.

53. Secured party possession of collateral-(1) A secured party must use reasonable care in the custody and preservation of collateral in the possession of the secured party and, unless the parties agree, 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, 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
- (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; and
- (c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and must apply any money so received, unless remitted to the debtor, immediately on its receipt in reduction of the obligation secured; and
- (d) the secured party must keep the collateral identifiable, but fungible collateral may be commingled.

(3) 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.
- (5) The collateral may be disposed of by the secured party in its existing condition or after repair, processing or preparation for disposition.

54. Notice and claim for distribution-(1) At least 10 days before distribution of the proceeds of disposition, the secured party must give notice of the proposed distribution to the persons required to receive notice of disposition.

(2) A notice under subsection (1) must state the following:

- (a) the earliest date on which distribution may occur;
- (b) that the person may present a claim for distribution;
- (c) the address to which the claim must be presented;
- (d) the type of proof of the claim that must be provided.

(3) The notice of proposed distribution may be included in the notice of disposition or provided separately.

(4) If the secured party receives a claim from any other secured party, lien holder or other person from whom the secured party received notice of a claim of an interest in the collateral before distribution of the proceeds is completed, the claim must be included in the distribution process.

(5) If the secured party so requests, a claimant must provide proof of the interest or lien before distribution is completed.

55. Application of proceeds and clear title of buyer-(1) The proceeds of disposition must be applied in the following order:

- (a) the reasonable expenses of retaking, holding, preparing for disposition, and disposing of the collateral, including reasonable solicitors' fees and legal expenses incurred by the secured party;
- (b) the satisfaction of obligations secured by any priority status security interest or lien;
- (c) the satisfaction of the obligation secured by the security interest of the enforcing secured party;

- (d) the satisfaction of obligations secured by any subordinate security interest or lien in the collateral if a written demand and proof of the interest are received before distribution of the proceeds is completed.
- (2) The secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency.
- (3) Where collateral is sold to a purchaser who acquires the interest for value in good faith and who takes possession of it:
  - (a) all security interests in the collateral and their proceeds that are subordinate to the security interest of the secured party who sold the collateral are extinguished on the sale of the collateral; and
  - (b) the purchaser acquires the collateral free from the interests of the secured party, the debtor and any subordinate secured party or lien holder.

56. Retention of collateral by secured party-(1) After default, the secured party may propose to the debtor to take all or part of the collateral in satisfaction of all or a part of the debtor's obligation, and must give notice of the proposal to the following:

- (a) the debtor;
  - (b) any other secured party or lien holder who, five (5) days before the notice is given to the debtor, has perfected its security interest or lien by filing;
  - (c) any other person with an interest in the collateral who has given a written notice to the secured party before the notice is given to the debtor.
- (2) If the secured party receives objection in writing from a person entitled to receive notice under subsection (1) within 15 days after the notice was given, the secured party must dispose of the collateral as provided in this Division unless otherwise directed by a court.

(3) If no objection is received within the 15 days period, the secured party is deemed to have irrevocably elected to retain the collateral in satisfaction of the debtor's obligation in accordance with the proposal.

(4) The secured party may request that any person mentioned in subsection (1), other than the debtor, provide proof of that person's interest and, unless the person provides proof not later than 10 days after the secured party's request, the secured party may proceed as if no objection were received from the person.

(5) On application by a secured party, a 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
- (b) the market value of the collateral is less than the total amount owing to the secured party and the costs of disposition.

(6) If collateral that was retained by the secured party is sold to a purchaser who acquires the interest for value and in good faith and who takes possession of it, the purchaser acquires the collateral free from the interests of the secured party, the debtor and any subordinate secured party or lien holder.

### *Division 3 – Debtor rights*

**57. Debtor's right to reinstate security agreement-**(1) The debtor, other than a guarantor or indemnitor, may, at any time after the secured party has taken possession of the collateral but before the secured party sells or agrees to sell the collateral under this Act, reinstate the security agreement by:

- (a) paying to the secured party the amount required to reinstate the security agreement or, where the security agreement secures the performance of an obligation other than the payment of money, performing any accrued obligations; and
- (b) remedying any default in so far as it is capable of being remedied.

(2) In this section:

“amount required to reinstate the agreement” means the aggregate of -

(i) an amount which has fallen due for payment under the security agreement and has not been paid, including, without limitation, interest or other charges, exclusive of any acceleration clause in the security agreement; and

(ii) the reasonable cost or expense of the secured party of and incidental to taking possession of, holding, storing, repairing, maintaining, valuing, and preparing for the sale of, the collateral and of returning it to the order of the debtor; and

(iii) the cost reasonably and actually incurred by the secured party in doing any act, matter, or thing necessary to remedy any default by the debtor.

“accrued obligations” means obligations which have fallen due for performance under the security agreement and have not been performed.

(3) Unless agreed, the debtor is not entitled to reinstate a security agreement:

(a) more than once, if the security agreement provides for payment in full by the debtor not later than 12 months after the day on which value was given by the secured party; or

(b) more than once in each year, if the security agreement provides for payment by the debtor during a period greater than one (1) year after the day on which value was given by the secured party.

58. Consequences of reinstating agreement-(1) If the right to reinstate the agreement is exercised under section 59:

(a) upon the receipt of the required amount, or confirmation of the performance of the accrued obligations and the default being remedied, the

secured party must immediately return the collateral to the debtor; and

- (b) the debtor is deemed to receive and hold the returned collateral pursuant to the terms of the security agreement as if the default had not occurred and the secured party had not taken possession of the collateral.

(2) If the collateral is returned to the debtor under subsection (1)(a) and a particular default has not been remedied, the secured party has no right, arising out of that default, to retake possession of the collateral unless:

- (a) by notice in writing served on the debtor at the time of the return of the collateral, the secured party specifies the default and requires it to be remedied; and
- (b) the debtor fails to remedy the default within a period to be specified in the notice (being a period of not less than 14 days after the service of the notice on the debtor).

59. Redemption-(1) A person who is entitled to receive a notice of disposition may redeem the collateral unless:

- (a) the person has not, after the default, waived in writing the right to redeem;
- (b) the secured party has not yet disposed of or contracted for disposition of the collateral; and
- (c) the secured party has not irrevocably elected to retain the collateral.

(2) To redeem the collateral, the person must tender performance of all obligations secured by the collateral and pay the reasonable expenses that were incurred to seize, hold, repair and prepare the collateral for disposition.

60. Remedies for secured party non-compliance-(1) If the secured party does not comply with the requirements of this Part, a court may order or restrain disposition of collateral.

(2) If disposition has occurred, the debtor or any person entitled to be informed or whose security interest has been made known to the secured party prior to the disposition has a right to

recover from the secured party any loss caused by a failure to comply with this Part.

PART V  
MISCELLANEOUS

61. **Pre-emption of conflicting Acts** - If there is a conflict between a provision of this Act and a provision of any other law, other than the Constitution, this Act prevails unless the other law specifically amends or repeals this Act.

62. **Regulations and orders**-(1) The Head of State, acting on the advice of Cabinet, may make regulations:

- (a) prescribing fees that are payable under this Act; or
  - (b) prescribing all matters which are required or permitted by this Act to be prescribed; or
  - (c) prescribe all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Minister may, by order published in the *Savali*:
- (a) prescribe the manner in which fees prescribed under subsection (1)(a), are to be paid under this Act; and
  - (b) approve forms, if any, and certificates for the purpose of this Act.

63. **Offences**-(1) A person who, maliciously or fraudulently, registers a notice commits an offence and is liable upon conviction to a fine not exceeding 1000 penalty units or imprisonment for a period not exceeding seven (7) years, or both.

(2) A person who, willfully and without lawful or proper authorisation, destroys or tampers with any record that is in the Registry, commits an offence and is liable upon conviction to a fine not exceeding 1000 penalty units or imprisonment for a period not exceeding seven (7) years, or both.



(3) A person who attempts to do any act that is referred to in subsection (2) commits an offence and is liable upon conviction to a fine not exceeding 500 penalty units or imprisonment for a period not exceeding three (3) years, or both.

(4) Despite the Criminal Procedure Act 1972, any information for an offence under this Act may be laid at any time within three (3) years after the date of the offence.

(5) This Act does not affect the liability of any person under any other Act or law.

64. Repeal and transitional-(1) The Chattels Transfer Act 1975 is repealed.

(2) This section applies to:

(a) transactions concluded prior to the commencement of this Act that would be subject to this Act if it had been in effect at the time the transactions were concluded, (“prior transaction”); and

(b) the right of a lien creditor whose right arose prior to the commencement of this Act, (“prior lien”).

(3) The validity and effect of a prior transaction or prior lien that was concluded before the commencement of this Act must be determined by reference to the Act in effect when the agreement was concluded, except as provided otherwise in this section.

(4) A secured party in a prior transaction or the holder of a prior lien may file a notice of the interest in the same manner as provided for a notice of a security interest and the authorisation of the debtor is not required.

(5) If the secured party in a prior transaction or the holder of a prior lien filed a notice or otherwise perfected its interest by a means provided in this Act within 90 days after the commencement of this Act, its priority must be measured from the commencement of this Act.

(6) If the notice of an interest created by a prior transaction or prior lien is filed or perfected after 90 days from the commencement of this Act, its priority must be measured from the date of filing.

(7) Priority between a security interest perfected under this Act and an interest created by a prior transaction or a prior lien for which a notice has not been filed under this section or otherwise perfected under this Act must be determined under this Act.

(8) The interest created under the prior transaction or prior lien is, for that purpose, deemed to be an unperfected security interest.

65. Consequential amendments-(1) In the Companies Act 2001:

(a) for section 155 substitute:

“A charge, mortgage or other pledge that is not registered under any other Act governing the registration or filing of charges, mortgages or other pledges against company property is void as against the administrator, the liquidator, receiver and any creditor of the company.”; and

(b) sections 325(1)(c), 325(2) and Schedule 7 are repealed; and

(c) in Schedule 1, for the definition of “registered charge” substitute:

“A charge, mortgage or other pledge that is registered under any other Act governing the registration or filing of charges, mortgages or other pledges against company property.”.

(2) Part III (which includes sections 24 to 32) of the Industrial and Provident Societies Act 1968 is repealed.

(3) In the Mercantile Law Act 1975, after section 3(1), insert:

“(1A) Where a mercantile agent is, with the consent of the owner, in possession of goods, or documents of title to the goods, that are subject to a perfected security interest under the Personal Property Securities Act 2013, the person

taking under any disposition of the goods is deemed to have notice that the person making the disposition has no authority to make it, unless it is proved that the authority did exist.”.

(4) In the Sale of Goods Act 1975:

(a) after section 22(2)(b) insert:

“(c) The provisions of the Personal Property Securities Act 2013 enabling a purchaser of goods to acquire good title to the goods.”;  
and

(b) after section 25(1) insert:

“(1A) Subsection (1) does not apply to a delivery or transfer of goods or documents of title to the goods by a person who is, with the consent of the holder of a security interest that has been perfected under the Personal Property Securities Act 2013, in possession of the goods or documents of title to the goods.”; and

(c) in section 25(2), for “:” substitute “.”, and omit the proviso; and

(d) after section 25(2) insert:

“(2A) Subsection (2) does not apply to a delivery or transfer of goods or documents of title to the goods by a person who is, with the consent of the holder of a security interest that has been perfected under the Personal Property Securities Act 2013, in possession of the goods or documents of title to the goods.”; and

(e) after the newly inserted section 25(2A), insert:

“(3) In this section:

“mercantile agent” has the same meaning as in Part I of the Mercantile Law Act 1975;

“security interest” has the same meaning as in the Personal Property Securities Act 2013.”.

(5) In the Schedule to the Stamp Duty Ordinance 1932:

(a) in Item No. 1, for exemption (e) substitute:

“(e) Charges under the Personal Property Securities Act 2013 - any fee prescribed under the Personal Property Securities Act 2013.”; and

(b) in Item No. 11, for exemption (b) substitute:

“(b) Any fee prescribed under the Personal Property Securities Act 2013.”.

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The Personal Property Securities Act 2013 is administered  
by the Ministry of Commerce, Industry and Labour.

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