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THE OFFICIAL GAZETTE 27TH NOVEMBER, 2024
LEGAL SUPPLEMENT — C

BILL No. 20 of 2024 *Wednesday 27th November, 2024*

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

27th November, 2024.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.

GUYANA

BILL No. 20 of 2024

SECURITY INTERESTS IN MOVABLE PROPERTY BILL 2024

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A BILL
Intituled

AN ACT to provide for the creation and registration of security interests in movable property and for related matters.

A.D. 2024

Enacted by the Parliament of Guyana:-

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Security Interests in Movable Property Act 2024.

Application of Act.

2. (1) Subject to subsection (2), this Act applies to –

(a) liens created by judgment or by operation of law;

(b) 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, including –

(i) a finance lease; and

(ii) a commercial consignment;

(c) a lease of goods for a term of more than one year even though the lease may not secure payment or performance of an obligation; and

(d) an outright assignment of intangibles.

(2) This Act does not apply to –

(a) any right of set-off whether or not arising under or

from financial contracts governed by netting agreements; and

(b) an interest created or provided for by any of the following transactions –

(i) the creation or transfer of an interest in land;

(ii) a transfer of present or future claim to wages, salary, pay, commission or any other compensation for labour or personal services of an employee;

(iii) an assignment for the general benefit of creditors of the person making the assignment;

(iv) a transfer of an interest or claim in or under a contract of annuity or life policy of insurance;

(v) a transfer of a right to damages in tort not related to commercial activity;

(vi) the registration of a transfer, assignment, mortgage or assignment of a mortgage of a ship;

(vii) a transfer or mortgage in a licence, concession or other personal privilege issued or granted under any other written law for which a security interest is prohibited; and

(viii) an agreement made under the Hire Purchase Act 2022.

No. 23 of 2022

(3) Notwithstanding anything in this Act, the registration

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of charges under the Companies Act shall continue under Part III, Division A of the Companies Act and the law relating to security interests in movable property in this Act does not apply to the Companies Act.

Interpretation.

3. (1) In this Act -

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

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

"advance" means –

(a) the payment of money, the provision of credit or the giving of value; and

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

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

"amendment notice" means the information required or authorised by this Act or its regulations to be entered in the register to renew, discharge or otherwise amend a registration of an initial notice;

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

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

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

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

(a) automatically on the creation of a security interest if a bank or other financial institution that maintains the deposit or securities account is the secured creditor; or

(b) if the bank or other financial institution has concluded a control agreement in writing with a debtor and a secured creditor according to which the bank or other financial institution agrees to follow instructions from the secured creditor with respect to the payment of funds credited to the bank account without further consent from the debtor;

"commercial consignment" means a consignment where –

(a) a consignor has reserved an interest in goods that the consignor has delivered to the consignee for the purpose of sale, lease or other disposition; and

(b) both the consignor and the consignee deal in the ordinary course of business in goods of that description,

but does not include an agreement under which goods are delivered to an auctioneer for the purpose of sale

and a consignment for sale, lease or other disposition if the consignee is generally known to the creditors of the consignee to be selling or leasing or disposing goods for others;

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

"Court" means the High Court;

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

"debtor" –

(a) means a person who has an interest in collateral, and includes –

(i) a person who owes payment or performance of an obligation secured, whether or not that person owns or has other rights in the collateral;

(ii) a person who receives goods from another person under a commercial consignment;

(iii) a lessee under a lease for a term of more than one year;

(iv) a transferor of an account receivable or chattel paper;

(v) a transferee of or successor to the interest of a person referred to in sub-paragraphs (i) to (iv); or

(vi) if the person referred to in sub-paragraph (i) and the person who owns or has other rights in the collateral are not the same person, includes –

(A) the person who owns or has other rights in the collateral, where the term "debtor" is used in a provision of this Act dealing with the collateral;

(B) the obligor, where the term "debtor" is used in a provision of this Act dealing with the obligation; or

(C) both the person who owns or has other rights in the collateral and the obligor (if the context so requires); and

(b) includes a trustee for any of the persons referred to in paragraph (a);

"default" means –

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

(b) the occurrence of an event that, under a security agreement, gives a secured creditor the right to enforce a security interest;

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

(a) that covers goods in the possession of the bailee and

are identified or are fungible portions of an identified mass; and

(b) in which it is stated that the goods identified in it will be delivered to –

(i) a named person or to a transferee of that person;

(ii) a bearer; or

(iii) the order of a named person;

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

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

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

"goods" means tangible movable property and includes farm products, inventory, equipment, consumer goods, trees that have been severed, and petroleum or minerals that have been extracted, but does not include chattel paper, documents of title, negotiable instruments, investment securities or money;

"initial notice" means a form in the Register on which information is provided in order to effect, amend, terminate or continue a registration of a security interest;

"intangible" means movable property other than goods, chattel paper, documents of title, investment securities, money or negotiable instruments;

"inventory" means goods that are –

(a) held by a person for sale or lease, or that have been leased by the person as lessor;

(b) to be provided or have been provided under a contract for services;

(c) raw materials or work in progress; or

(d) materials used or consumed in a business;

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

(a) delivery with any necessary endorsement, assignment, or registration in the records of the issuer or agent of the issuer;

(b) an entry in the records of a clearing house or central securities depository;

(c) an entry in the records maintained for that purpose by or on behalf of the issuer; or

(d) an entry in the records maintained for that purpose by or on behalf of the nominee,

but does not include a writing that evidences a monetary obligation that is secured by an interest in

land;

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

"Minister" means the Minister responsible for commerce and business;

"movable property" includes goods, chattel paper, documents of title, intangibles, investment securities, money and negotiable instruments;

"negotiable instrument" means –

(a) a bill of exchange or promissory note within the meaning of the Bills of Exchange Act; or

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(b) any other writing that evidences a right to payment of money and is of a kind that, in the ordinary course of business, is transferred by delivery with any necessary endorsement,

but does not include chattel paper, document of title or investment security;

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

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

"proceeds" means identifiable or traceable movable property received as a result of sale, other disposition, collection, lease or licence of collateral, including proceeds of proceeds, civil and natural fruits,

distributions, or insurance proceeds and claims arising from defects in, damage to or loss of collateral;

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

"purchase money security interest" means –

(a) a security interest taken in collateral by a seller that secures the obligation to pay any unpaid portion of the purchase price of the collateral;

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

(c) the interest of a lessor of goods under a lease for a term of more than one year; or

(d) the interest of a consignor who delivers goods to a consignee under a commercial consignment,

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

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

"Registrar" means the Registrar of the Commercial Registry appointed under section 16 of the Deeds and

No. 4 of 2013 Commercial Registries Authority Act 2013;

"Registry" means the Commercial Registry referred to in section 12(a) of the Deeds and Commercial Registries Authority Act 2013;

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

(a) a consignor;

(b) a lessor;

(c) a transferee of an intangible; or

(d) a trustee or agent of the person referred to in paragraphs (a) to (c);

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

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

"value" means any consideration that is sufficient to support a simple contract and includes an antecedent debt or

liability and a binding commitment to provide future value.

(2) Except as otherwise provided in this Act, the determination of whether goods are consumer goods, equipment, farm products or inventory is to be made at the time when the security agreement is concluded.

Act binds the State.

4. This Act binds the State.

PART II

ADMINISTRATION

Commercial Registry.

5. The Commercial Registry shall be responsible for the registration of security interests in movable property under this Act.

Registrar and other officers.

6. (1) The Registrar of the Commercial Registry shall be responsible for –

(a) ensuring that the Register, provided for under section 45, is maintained in accordance with this Act; and

(b) the performance of the functions assigned to the Registrar by this Act, which functions may be carried out by any member of the staff of the Registry under the direction of the Registrar.

(2) The Registrar may, subject to such conditions as the Registrar thinks fit, delegate to the Deputy Registrar or Assistant Registrar any of the powers or functions of the Registrar under this Act, except the power of delegation.

(3) The Registrar may continue to exercise the power or perform the function notwithstanding the delegation of that power or function.

PART III

CREATION OF SECURITY INTEREST BY SECURITY AGREEMENT

Creation of security interest and effectiveness of security agreement.

7. (1) A security interest may be created or provided for in movable property by agreement between parties and perfected against third parties in accordance with this Act.

(2) Except as otherwise provided by this Act or any other written law, a security agreement is effective according to its terms.

(3) In respect of a property jointly owned by two or more persons, every joint owner shall subscribe to every agreement made and entered between the creditor and the debtors.

Obligations that may be secured.

8. A security agreement may secure one or more obligations of any type, present or future, determined or determinable, conditional or unconditional, fixed or floating.

Assets that may be encumbered.

9. A security agreement may encumber –

(a) any type of movable asset;

(b) a part of or an undivided right in a movable asset;

(c) a generic category of movable assets; or

(d) all of a debtor's movable assets.

Description of collateral in security agreement.

10. (1) A security agreement is enforceable and a security interest is created in respect of the collateral only if –

(a) the debtor has signed a security agreement that contains a description of the collateral that reasonably enables the collateral to be identified;

(b) value is given by the secured creditor; and

(c) the debtor has rights in the collateral or the power

to encumber it.

(2) A description of the collateral satisfies the standard in subsection (1)(a) if the description indicates that –

(a) a security interest is taken in all the debtor's movable assets, or in all the debtor's movable assets within a generic category;

(b) a security interest is taken in all of the debtor's present and after-acquired property; or

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

(3) For the purposes of subsection (2), a description of the collateral is inadequate if the collateral is described as consumer goods without specific reference to the item or kind of collateral.

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

PART IV

PERFECTION OF SECURITY INTERESTS

Perfection of a security interest.

11. (1) A security interest is perfected when -

(a) the security interest is created; and

(b) either -

(i) an initial notice is registered in respect of the security interest;

(ii) the secured creditor or another person on behalf of the secured creditor has possession

of the collateral (except where possession is a result of seizure or repossession); or

(iii) the secured creditor or another person on behalf of the secured creditor has control of the collateral that is a deposit account or investment security.

(2) Subsection (1) applies regardless of the order in which creation referred to in subsection (1)(a) and either of the steps referred to in subsection (1)(b) occur.

(3) A security interest in cash other than cash proceeds may only be perfected by possession by the secured creditor or a person acting on behalf of the secured creditor.

Continuity of perfection.

12. A security interest is continuously perfected if -

(a) the security interest is perfected under this Act; or

(b) the security interest is subsequently perfected in another way under this Act; and

(c) there is no intervening period during which the security interest is unperfected.

PART V

SECURITY INTERESTS IN MOVABLE PROPERTY

Security interests in after-acquired property.

13. (1) Subject to subsection (2), a security agreement may provide for security interests in after-acquired property, which shall not become an enforceable security interest until the debtor acquires rights in it or the power to encumber it.

(2) No security interest is created under an after-acquired property clause in a security agreement in respect of consumer goods, other than accessions, unless the debtor acquires rights to

them within ten days after the secured creditor gives value.

Security interests in proceeds.

14. Except as otherwise provided in this Act, a security interest in the collateral that is dealt with or otherwise gives rise to proceeds shall -

(a) continue in the collateral unless the secured creditor expressly or impliedly authorised the dealing; and

(b) extend to the proceeds,

but if the secured creditor enforces the security interest against both the collateral and the proceeds, the amount secured by the security interest in collateral and the proceeds is limited to the value of the collateral at the date of the dealing that gave rise to the proceeds.

Continuous perfection of security interest in proceeds.

15. A security interest in proceeds is continuously perfected –

(a) if the security interest in the original collateral is perfected by registration of an initial notice that contains a description of the original collateral; and

(b) if the proceeds –

(i) are of a kind that is within the description of the original collateral; or

(ii) are cash proceeds.

Temporary perfection of security interests in proceeds in other cases.

16. (1) Where the proceeds are not cash proceeds and not within the description of the collateral in the initial notice, a security interest in the proceeds remains perfected for the first ten working days after the proceeds arose.

(2) If the secured creditor does not perfect the security

interest by amending the initial notice to include the non-conforming proceeds within the ten working days, the security interest in the proceeds will become unperfected.

Temporary perfection of negotiable instruments or investment securities.

17. (1) A security interest in a negotiable instrument or an investment security that is perfected by possession shall remain perfected for a period of ten working days after the secured creditor made the negotiable instrument or investment security available to the debtor for the purposes of sale, exchange, presentation, collection, renewal or registration of a transfer.

(2) Beyond the ten working days a security interest under this section becomes subject to the provisions of this Act for perfecting a security interest.

Temporary perfection of negotiable documents of title or goods.

18. (1) A security interest in a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title shall be temporarily perfected for a period of ten working days after the secured creditor made the negotiable document of title or goods available to the debtor, if -

(a) the security interest was perfected by possession; and

(b) the secured creditor delivered the negotiable document of title or goods for the purposes of sale, exchange, loading, unloading, storing, shipping, manufacturing, processing, packaging or otherwise dealing with the goods in preparation for their sale or exchange.

(2) Beyond the ten working days a security interest under this section becomes subject to the provisions of this Act for perfecting a security interest.

Perfection where goods in hands of bailee.

19. A security interest in goods in the possession of a bailee may be perfected when -

(a) the security interest has been created and an initial notice relating to the goods is registered;

(b) possession of a negotiable document of title to the goods has been delivered to the secured creditor; or

(c) the bailee has issued a document of title in the name of the secured creditor or holds the goods on behalf of the secured creditor.

Security interests in crops and trees to be severed.

20. (1) Except as otherwise provided in this Act, a security interest may be created and perfected in crops and trees to be severed, and continue as such before they are planted, while growing and afterwards when cut or separated from the soil.

(2) A security interest in crops and trees –

(a) shall only be created with the consent of the mortgagee or lessor under a lease of the land on which the crops are growing; and

(b) the duration of the security interest shall not be for a period greater than three years.

(3) Provided that a notice of a security interest has been registered in the Deeds Registry or Land Registry in accordance with section 61, no perfected security interest in crops shall be extinguished or prejudicially affected by a subsequent sale, lease, mortgage or other encumbrance of or on the land on which the crops are growing.

Security interests in fixtures.

21. (1) Except as otherwise provided in this Act, a security interest may be created and perfected in goods intended as

fixtures and continue as such after the goods become a fixture.

(2) A security interest in goods that become fixtures shall only be created with the consent of the mortgagee or lessor under a lease of the immovable property on which the goods may become a fixture.

(3) Provided that a notice of a security interest has been registered in the Deeds Registry or Land Registry in accordance with section 61, no perfected security interest in goods that became fixtures shall be extinguished or prejudicially affected by a subsequent sale, lease, mortgage or other encumbrance of or on the immovable property to which the goods are affixed.

PART VI

PRIORITY BETWEEN SECURITY INTERESTS

Priority of security interests generally

Priority of security interests in same collateral.

22. (1) Where this Act does not provide another method for determining priority between security interests in the same collateral –

(a) a perfected security interest shall have priority over an unperfected security interest;

(b) priority between perfected security interests shall be determined by the order of whichever of the following first occurs in relation to a particular security interest –

(i) the registration of an initial notice;

(ii) the secured creditor, or another person acting on behalf of the secured creditor, taking possession of the collateral (except where possession is a result of

seizure or repossession); or

(iii) the secured creditor, or another person acting on behalf of the secured creditor, acquiring control of the collateral; and

(c) priority between unperfected security interests in the same collateral shall be determined by the order of creation of the security interests.

(2) For the purposes of subsection (1), a security interest that is first perfected in one manner and later perfected in another manner without a break in perfection is continuously perfected and retains its priority from the date of its original perfection.

(3) Subject to section 14, the priority of a security interest in original collateral shall also be the priority with respect to its proceeds.

Transfer of security interests does not affect priority.

23. A security interest that is transferred shall have the same priority as it had at the time of the transfer.

Voluntary subordination of security interests.

24. (1) A secured creditor may, in a security agreement or otherwise, subordinate its security interest to any other interest.

(2) No agreement to subordinate a security interest shall adversely affect the rights of a person who is not a party to the agreement.

(3) An agreement to subordinate a security interest shall be effective according to its terms between the parties and may also be enforced by a third party if the third party is the person for whose benefit the agreement is intended.

Priority of advances

Priority of security interests to all advances.

25. A security interest shall have the same priority in respect of all advances, including future advances.

Priority of purchase money security interests

Priority of purchase money security interests in collateral etc. or its proceeds.

26. (1) Subject to section 14 a purchase money security interest shall have priority over a non-purchase money security interest in the same collateral given by the same debtor if –

(a) in collateral or its proceeds, other than inventory, the purchase money security interest in the collateral or its proceeds is perfected within ten working days after the day on which the debtor, or another person at the request of the debtor, obtained possession of the collateral;

(b) in inventory or its proceeds -

(i) the purchase money security interest in the inventory or its proceeds is perfected at the time the debtor, or another person at the request of the debtor, obtains possession of the inventory;

(ii) before the debtor receives possession of the inventory, the purchase money secured creditor gives notice in writing to all previous secured parties who have registered an initial notice that describes the collateral as, or as including, inventory or receivables; and

(iii) the notice referred to in subparagraph (ii) states that the person giving it has or

expects to acquire a purchase-money security interest in inventory of the debtor, describing such inventory by item or type; or

(c) in an intangible or its proceeds, the purchase money security interest in the intangible or its proceeds is perfected within ten working days after the day on which the security interest in the intangible was created.

Non-proceeds security interest in accounts receivable.

27. (1) A security interest in accounts receivable that is given for new value shall have priority over a purchase money security interest in the accounts receivable as proceeds of inventory if the security interest in the accounts receivable is registered before the purchase money security interest in the inventory.

(2) In this section, "new value" means value other than antecedent debt or liability.

Priority of security interest in accessions

Security interest in accessions.

28. (1) A security interest in collateral that becomes an accession shall continue in the accession.

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

Priority of security interests in goods before they become accessions.

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

Priority of security interests in processed or commingled goods

Continuation of security interests in processed or commingled goods.

30. A perfected security interest in goods that subsequently become part of a product or mass shall continue as a perfected security interest in the product or mass if the goods are manufactured, processed, assembled, or commingled in such a way that their identity is lost in the product or mass.

Limit on value of priority of processed or commingled goods.

31. If more than one security interest is perfected in the goods before they become part of a product or mass, the security interests rank equally in proportion to the value of the goods at the time they became part of the product or mass.

Priority where more than one security interest continues in processed or commingled goods.

32. (1) A perfected security interest continuing in the product or mass shall have priority over an unperfected security interest continuing in the same product or mass.

(2) If more than one unperfected security interest continues in the same product or mass, each unperfected security interest shall be 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.

Priority of purchase money security interests in goods that continue in processed or commingled goods.

33. Notwithstanding section 32, a perfected purchase money security interest in goods that continues in a product or mass shall have priority over –

(a) a non-purchase money security interest in the goods that continues in the product or mass; and

(b) a non-purchase money security interest in the product or mass given by the same debtor.

Priority of security interests in transferred collateral

Rights of debtor may be transferred.

34. (1) The rights of a debtor in collateral may be transferred despite a provision in the security agreement prohibiting transfer or declaring a transfer to be a default.

(2) No transfer by the debtor shall prejudice the rights of the secured creditor under the security agreement, including the right to treat a prohibited transfer as an act of default.

(3) In this section, "transfer" includes a sale, the creation of a security interest or a transfer under judicial enforcement proceedings.

General priority of security interests in transferred collateral over security interests granted by transferee.

35. Where a debtor transfers an interest in the collateral that, at the time of the transfer, is subject to a perfected security interest, that security interest shall have priority over any other security interest granted by the transferee.

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

36. (1) If a security interest is perfected by registration and the debtor, with the prior consent of the secured creditor, transfers all or part of its interest in the collateral, the security interest in the transferred collateral becomes unperfected fifteen days after the transfer is made unless the secured creditor registers an amendment notice within such fifteen days.

(2) Where a security interest is perfected by registration and the debtor, without the prior consent of the secured creditor, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected thirty days after the later of –

(a) the transfer, if the secured creditor had prior knowledge of the transfer and if the secured creditor had, at the time of the transfer, the

information required to register an amendment notice; or

(b) the day the secured creditor learns the information required to register an amendment notice,

unless the secured creditor registers an amendment notice or takes possession of the collateral within such thirty days.

PART VII

SPECIAL PRIORITY RULES

Lien has priority over security interests relating to same goods.

37. A possessory lien arising out of materials or services provided in respect of goods that are subject to a security interest in the same goods shall have priority over that security interest if -

(a) the materials or services relating to the lien were provided in the ordinary course of business;

(b) the lien has not arisen under any written law that provides that the lien does not have the priority; and

(c) the person who provided the materials or services did not, at the time the person provided those materials, know that the security agreement relating to the goods contained a provision prohibiting the creation of a lien by the debtor.

Transferee takes money free of security interest.

38. A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of a secured creditor.

Priority of creditor who receives payment of debt.

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

Priority of purchaser of negotiable instrument, document of title, chattel paper and security certificate.

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

(a) gave value;

(b) acquired the negotiable instrument, document of title, chattel paper or security certificate without knowledge that the transaction is a breach of the security agreement to which the security interest relates; and

(c) took possession of the negotiable instrument, document of title, chattel paper or security certificate.

Priority of interests on assignment of account receivable or non-negotiable chattel paper.

41. (1) The rights of an assignee of an account receivable or non-negotiable chattel paper shall be subject to –

(a) the terms of the contract between the account debtor and the assignor and any defence or claim arising from the contract or a closely connected contract; and

(b) any other defence or claim of the account debtor against the assignor (including a defence by way of a right of set-off) that accrues before the account debtor receives

notification of the assignment.

(2) In this section, "assignee" includes a transferee or other secured creditor.

Judgment creditor has priority over unperfected security interests.

42. (1) The interest of a judgment creditor in any collateral shall have priority over any security interest in the same collateral if the security interest is not perfected at the time of execution.

(2) In this section, "time of execution" means –

(a) if the collateral is seized by or on behalf of a judgment creditor, the time of seizure; or

(b) in any other case, the time when a charging order or a garnishee order is served on the person holding some property for or on behalf of the debtor.

Buyer or lessee takes collateral free of unperfected security interests.

43. A buyer or lessee of collateral who acquires the collateral for value shall take the collateral free of an unperfected security interest in the collateral.

Buyer or lessee of goods sold or leased in ordinary course of business takes goods free of certain security interests.

44. A buyer of goods sold in the ordinary course of business of the seller and a lessee of goods leased in the ordinary course of business of the lessor shall take the goods free of a security interest created by the seller or lessor unless the buyer or lessee knows that the sale or lease constitutes a breach of the security agreement under which the security interest was created.

PART VIII

REGISTRATION

Register of security interests in movable property.

45. (1) The Registrar shall keep and maintain in electronic form a Register of Security Interests in Movable Property that provides

for –

(a) the submission of information in respect of security interests in movable property directly in the Register by electronic means in the manner and form prescribed;

(b) the assignment of a registration number to each initial notice, amendment notice and termination notice registered under this Part, together with a notation date and time of the submission;

(c) the Register to be searchable; and

(d) any other feature the Registrar thinks necessary.

(2) Regulations may provide for the manner and form of payment of fees charged for the services of the Registry.

Registration of initial notice.

46. (1) A person may register an initial notice in the Commercial Registry by submitting in the initial notice form in the Register the following particulars in respect of the security interests in movable property -

(a) if the debtor is -

(i) an individual, the individual's unique identifier to be prescribed, name and address in the form to be prescribed;

(ii) a business entity registered under the Business Names (Registration) Act, the entity's unique identifier to be prescribed, registration number, name and address in the form to be prescribed; or

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(iii) an incorporated business entity, the entity's unique identifier to be prescribed, the number

assigned to it on its incorporation and its name and address in the form to be prescribed;

(b) if the secured creditor is -

(i) an individual, the individual's name, unique identifier to be prescribed and address in the form to be prescribed;

(ii) a business entity registered under the Business Names (Registration) Act, the entity's unique identifier to be prescribed, the registration number of the entity and the name and address in the prescribed form; or

(iii) an incorporated business entity, the entity's unique identifier to be prescribed, the number assigned to it on its incorporation and the name and address of the corporation in the prescribed form;

(c) a description of the collateral;

(d) the term for which the security interest shall be effective (the registration period); and

(e) any other particulars as may be prescribed.

(2) An initial notice is registered at the time a registration number, date and time are assigned to it in the Register.

(3) An initial notice may be registered before or after a security agreement is concluded.

(4) An initial notice may relate to one or more security agreements.

Verification statement.

47. (1) Immediately after the registration of an initial notice, the Registrar shall provide the registrant with a verification

statement, in the form prescribed, containing the information in the notice, the date and time of the registration and the registration number of the notice.

(2) A copy of the verification statement shall be given to the debtor by the secured creditor who registered an initial notice, or on whose behalf an initial notice has been registered, within 7 clear days after the verification statement is received, unless the debtor has waived in writing the right to receive it.

Consent to register initial notice or amendment notice.

48. (1) A debtor who enters into a security agreement shall consent to the registration of an initial notice and any amendments to the notice.

(2) The debtor may consent to the registration of an initial notice prior to the conclusion of a security agreement.

(3) The debtor's consent may be indicated in the security agreement or a separate document signed by the debtor and the creditor.

Validity of registration.

49. (1) The validity of the registration of an initial notice shall not be affected by a defect, irregularity, omission or error unless the defect, irregularity, omission or error is seriously misleading.

(2) The registration shall be invalid if there is a seriously misleading defect, irregularity, omission or error in –

(a) the identifier of a debtor; or

(b) the serial number of the collateral, if so assigned.

(3) If it is alleged that a defect, irregularity, omission or error is seriously misleading, it is not necessary to prove that any person was actually misled by it.

(4) An incorrect description of certain collateral shall not

render the registration invalid with respect to other collateral sufficiently described in the initial notice.

Time of validity of initial notice.

50. Except as otherwise provided in section 49, a registration of an initial notice shall be valid until the earliest of the following period –

(a) the expiration of the term of the security interest specified in the initial notice; or

(b) when the initial notice has been discharged before the expiration of the relevant period referred to in paragraph (a).

Renewal of registration.

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

Registration of transfer of perfected security interests.

52. (1) If a secured creditor transfers a security interest perfected by registration, the transferred security interest shall remain effective.

(2) The transferee is not required to amend the registration that names the transferor as the secured creditor or to register a new initial notice against the debtor.

Registration of subordinated security interests.

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

Amendment or discharge of registration.

54. (1) A secured creditor may amend or discharge a registration of an initial notice by registering an amendment notice at any time before the expiration of the registration period

specified in the initial notice.

(2) An amendment to a registration shall not add –

(a) collateral; or

(b) a new debtor.

Discharge of registration relating to consumer goods.

55. If a registration of an initial notice covers consumer goods, the secured creditor shall register an amendment notice discharging the registration within fifteen clear days after all obligations under the security agreement creating the security interest are performed, unless the registration period lapses before the expiration of the fifteen-day period.

Debtor may demand registration of amendment notice.

56. (1) Without prejudice to section 55, the debtor may demand in writing that the secured creditor amend or discharge the registration of the initial notice where -

(a) all of the obligations under the security agreement to which the registration relates have been performed and there is no commitment to make future advances;

(b) the secured creditor has agreed to release part of the collateral described in the registered initial notice;

(c) the collateral described in the registered initial notice includes an item or kind of property that is not collateral under a security agreement between the secured creditor and the debtor;

(d) no security agreement exists between the parties; or

(e) the security interest is extinguished in accordance with this Act.

(2) On receipt of the demand submitted under subsection (1), the secured creditor shall register, within fifteen clear days, an amendment notice -

(a) discharging the registration with respect to matters described in subsection (l)(a), (d) or (e);

(b) amending the registration to release some property that is no longer collateral in a case within subsection (1)(b) or that was never collateral under a security agreement between the secured creditor and the debtor referred to in subsection (l)(c); or

(c) amending or discharging the registration as to reflect the terms of the agreement in a case within subsection (1)(c).

(3) A secured creditor shall not charge any fee on the demand by the debtor under subsection (1).

(4) If a secured creditor fails to comply with subsection (1), the debtor may apply to the Court to issue an order to the Registrar to amend or discharge the registration, as the case may be.

Court order to amend or discharge.

57. (1) The Court may, on application by the debtor under section 56(4), order the Registrar to amend or discharge the registration of the initial notice.

(2) The Court may make any other order as it thinks proper for the purpose of giving effect to an order under subsection (1).

(3) The Registrar shall amend or discharge a registration in accordance with the order of the Court as soon as reasonably practicable after receiving the order.

Search in register.

58. (1) An initial notice shall not be effective against third parties until it is searchable in the register.

(2) A person may search the register as to -

(a) the unique identifier of the debtor;

(b) the serial number of the collateral, if so assigned; and

(c) the registration number assigned to the registered initial notice.

(3) A search in the register may be carried out without assigning any reason for the search.

Offences on registration and search.

59. A person who registers an initial notice or carries out a search in the register with a frivolous, malicious or criminal purpose or intent commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for six months.

Search certificate as evidence.

60. The Registry may, on request and payment of the prescribed fee, issue a search certificate which shall be conclusive evidence of the existence of information in the Registry as to the date and time of the issuance.

Notice in appropriate land register.

61. (1) A notice of a security interest, in the prescribed form, may be registered in the Deeds Registry or Land Registry, as the case may be, where the collateral is or includes goods that may become fixtures or farm products that may become crops, or timber to be severed from the land.

(2) A notice registered under subsection (1) may be discharged or partially discharged by a certificate in the prescribed form and the certificate may be registered in the Deeds Registry or Land Registry, as the case may be.

(3) Where a notice has been registered under subsection (1), every person dealing with the collateral shall be deemed for the purposes of sections 20 and 21 to have knowledge of the security interest.

PART IX

ENFORCEMENT OF SECURITY INTERESTS

Application of this Part.

62. (1) This Part applies to all security interests, except those created or provided for by -

(a) an outright transfer of an account receivable or chattel paper;

(b) a lease that does not secure payment or performance of an obligation; or

(c) a commercial consignment that does not secure payment or performance of an obligation.

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(2) This Part does not apply to remedies and measures provided in the Insolvency Act.

(3) The parties to a security agreement may contract out of sections 63, 64, 79, 83 and 84.

General principle of enforceability.

63. (1) If the debtor is in default, a secured creditor may -

(a) take possession of the collateral; or

(b) without removal, render the collateral unusable in accordance with section 64.

(2) A secured creditor may proceed under this section -

(a) to judicial process; or

(b) without judicial process, if the debtor does not resist the removal of the collateral.

(3) The commencement of enforcement requires registration of the enforcement form which shall identify –

(a) the debtor;

(b) the secured creditor; and

(c) the collateral against which enforcement is sought.

(4) A prior notice to the debtor is not required for the secured creditor to repossess or render the collateral unusable under this section.

Secured creditor may render collateral unusable.

64. (1) A secured creditor with priority over all other secured parties may render the collateral unusable under section 63 if the collateral is of a kind –

(a) that cannot be readily removed from the premises of the debtor; or

(b) for which adequate storage facilities are not readily available.

(2) If subsection (1) applies, the secured creditor may dispose of the collateral on the premises of the debtor:

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

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

65. (1) Notwithstanding section 63, if the debtor is in default, a secured creditor with priority over all other secured parties may collect and apply an account receivable, investment security, money or negotiable instrument taken as collateral to the satisfaction of the obligation secured by the security interest.

(2) Unless otherwise agreed, the secured creditor may notify the account debtor and collect payment.

Collateral at risk.

66. (1) Notwithstanding section 63, a secured creditor may take possession of the collateral, with or without leave of the Court, and sell the collateral when -

(a) the debtor is in default under the security agreement; and

(b) the collateral is at risk.

(2) In subsection (1), collateral is at risk if the secured creditor has reasonable grounds to believe that the collateral has been or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold or otherwise disposed of contrary to the provisions of the security agreement.

Repair and preparation of collateral.

67. (1) The collateral may be disposed of by the secured creditor in its existing condition or after repair, process or preparation for disposition.

(2) The cost of the repair, process or preparation may be included in the expenses of enforcement.

Duty of secured creditor selling collateral.

68. A secured creditor who exercises a power of sale of the collateral under section 66 has a duty to obtain the best price reasonably obtainable at the time of sale to -

(a) the debtor;

(b) any person who has registered an initial notice in the collateral that is effective at the time the secured creditor repossessed the collateral; and

(c) any person who has given the secured creditor notice that that person claims an interest in the collateral.

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

69. If the collateral is a document of title, the power of sale provided by section 66 applies to the document of title and to the goods to which it relates.

Method of sale of collateral.

70. A secured creditor may effect a sale of the collateral under section 66 by auction, public tender, private sale or any other method as may be provided in the security agreement.

Notice of sale of collateral.

71. (1) A secured creditor who intends to sell the collateral under section 66 shall, within ten working days before selling the collateral, give notice to the persons referred to in section 68.

(2) Subsection (1) does not apply if –

(a) the collateral may perish within ten working days of the repossession;

(b) the secured creditor believes on reasonable grounds that the collateral will decline substantially in value if it is not disposed of immediately;

(c) the cost of care, maintenance and storage of the collateral is disproportionately large in relation to its value;

(d) the collateral consists of inventory;

(e) after the secured creditor repossesses the collateral, every person entitled to receive notice under subsection (1) consents in writing to the immediate sale of the collateral; or

(f) a Court grants leave to the secured creditor to sell collateral under section 66 without complying with subsection (1).

(3) Where a security interest extends to the collateral and

some of which is as described in subsection (2), the secured creditor may sell the collateral without complying with subsection (1).

Buyer takes collateral free of security interests.

72. The buyer of the collateral in a sale under section 70 shall take it free of any security interest.

Secured creditor to give statement of account to debtor.

73. If collateral is sold by a secured creditor under section 70, the secured creditor shall, within fifteen working days after the sale of the collateral, give the persons referred to in section 68 a statement of account in writing, showing -

(a) the amount of the gross proceeds of sale;

(b) the amount of the costs and expenses of the sale; and

(c) the balance owing by the secured creditor to the debtor, or by the debtor to the secured creditor, as the case may be.

Secured creditor selling collateral to pay prior ranking secured parties.

74. A secured creditor who has sold the collateral under section 70 shall, before applying the net proceeds of the sale towards the satisfaction of the debt or other obligation secured by the security interest of the secured creditor apply the net proceeds of the sale towards the reasonable costs and expenses of the sale.

Distribution of surplus.

75. (1) For the purposes of this Act, there is a surplus when the net proceeds recovered on disposition of the collateral under this Part exceeds the amount owed by the debtor to the secured creditor.

(2) If the secured creditor has retained the collateral pursuant to section 77 or sold the collateral under section 70, as the case may be, the secured creditor shall pay the following persons the

amount of any surplus in the following order -

(a) any person who has a subordinate security interest perfected by registration, in the order of the priority;

(b) any other person who has given the secured creditor notice that that person claims an interest in the collateral; and

(c) the debtor.

(3) In subsection (1), "net proceeds" means net proceeds of the sale after deducting the reasonable costs and expenses of the secured creditor of, and incidental to, taking possession of, holding, storing, repairing, maintaining, valuing, and preparing the sale of, and selling, the collateral.

Surplus may be paid into Court.

76. The secured creditor may pay the surplus into Court if there is a question as to who is entitled to receive payment under section 75.

Proposal of secured creditor to retain collateral.

77. (1) A secured creditor with priority over all other secured parties may, after default, propose to retain the collateral in satisfaction of the obligation secured by it.

(2) The secured creditor shall give notice of the proposal to the persons referred to in section 68.

Persons entitled to notice may object to proposal.

78. The secured creditor shall sell the collateral under section 70 if a person who is entitled to a notice under section 71 and whose interest in the collateral would be adversely affected by the proposal of the secured creditor to retain the collateral gives to the secured creditor a notice of objection within ten working days after receiving the notice referred to in section 77.

Person making objection may be requested by the

79. (1) The secured creditor may request a person, other than

secured creditor to prove interest.

the debtor, who objects to provide proof of the interest of the person.

(2) If the person to whom subsection (1) applies does not provide proof within ten working days after the request of the secured creditor, the secured creditor may proceed as if no objection were received from the person.

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

80. (1) If no notice of objection is received, the secured creditor shall, at the expiration of the ten day period referred to in section 79 –

(a) be deemed to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it; and

(b) be entitled to hold or dispose of the collateral free from all rights and interests of the debtor and of any person entitled to receive notice under section 71(1).

(2) All security interests in the collateral that are subordinate to the security interest of the secured creditor shall be extinguished.

Secured creditor shall not damage goods when removing accession.

81. (1) A secured creditor who is entitled to repossess an accession under section 63 shall remove the accession from the whole in a manner that causes no greater damage to the other goods or that puts the person in possession of the whole to no greater inconvenience than is necessary for the removal of the accession.

(2) A person, other than a debtor, who has an interest in the other goods at the time the goods become an accession shall be entitled to reimbursement for any damage to the interest of that person in the other goods caused by the removal of the

accession.

(3) Any reimbursement payable shall not include reimbursement for a reduction in the value of the property caused by the removal of the accession or by the necessity of the replacement of the accession.

(4) A person entitled to reimbursement under this section may refuse permission to remove the accession until the secured creditor has given adequate security for the reimbursement.

Entitled persons may redeem collateral.

82. (1) At any time before the secured creditor sells the collateral or is deemed to have taken the collateral in satisfaction of the obligation secured by it, a person who is entitled to receive a notice under section 71 may, unless the person otherwise agrees in writing after default, redeem the collateral by –

(a) tendering fulfilment of all the obligations secured by the collateral; and

(b) paying a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the collateral for sale, if those expenses have actually been incurred by the secured creditor, and any other reasonable expenses incurred by the secured creditor.

(2) The rights of the debtor to redeem the collateral shall have priority over any other person's right to redeem the collateral.

Debtor may reinstate the security agreement.

83. (1) At any time before the secured creditor sells the collateral or is deemed to have taken the collateral in satisfaction of the obligation secured by it, the debtor may, unless the debtor has otherwise agreed in writing after default, reinstate the

security agreement by -

(a) paying the sums actually in arrears, exclusive of the operation of an acceleration clause in the security agreement;

(b) remedying any other default by reason of which the secured creditor intends to sell the collateral; and

(c) paying a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the collateral for sale, if those expenses have actually been incurred by the secured creditor, and any other reasonable expenses incurred by the secured creditor.

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

Limit on reinstatement of security agreement.

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

Right of secured creditor to inspect land.

85. A secured creditor may from time to time, at his discretion, at all reasonable times enter on any land owned or leased by a person for the breeding of livestock or planting of crops and inspect any property that is subject to a charge or lien created pursuant to this Act.

(2) Any person obstructing in any way a secured creditor in making the inspection shall be liable on summary conviction to a fine of twenty thousand dollars.

Penalty for disposal of crops contrary to contract.

86. If a debtor disposes of any part of a crop referred to in any security agreement signed by him, or if he applies any part of the proceeds of sale of any such crops otherwise than in

accordance with that agreement, he shall be liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for six months.

Entry by secured creditor if debtor is not keeping up cultivation and husbandry.

87. If a secured creditor has reasonable grounds for believing that a debtor –

(a) has ceased or is neglecting to cultivate a crop in respect of which the secured creditor holds a lien; or

(b) is neglecting to rear his livestock in accordance with such rules as are generally recognized to be necessary for good husbandry,

the secured creditor may, after obtaining the written consent of the Chief Agricultural Officer, enter upon the land on which the crop is growing or on which the livestock is reared and take possession of the land and cultivate and reap the crop or breed the livestock and sell it and apply the proceeds of sale of the crop or livestock (after deducting the cost of upkeep of the land, and of growing, reaping, and selling the crop, or of breeding and selling the livestock) towards the reduction or discharge of the loan.

(2) Any debtor or other person obstructing in any way a secured creditor in exercising the powers conferred on him in the preceding subsection shall be liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for six months.

PART X

GENERAL

Damages.

88. (1) If a person fails to discharge any duty or obligation

imposed by this Act, the person to whom the duty or obligation is owed and any other person who can reasonably be expected to rely on performance of the duty or obligation shall have a right to recover damages for any loss or damage that was reasonably foreseeable as likely to result from the failure.

(2) Nothing in subsection (1) shall limit or affect any liability that a person may incur under any written law other than this Act.

(3) In addition to the damages recoverable under subsections (1) and (2), the person who registered an initial notice without authorisation of the debtor shall be responsible to pay to the debtor damages.

Secured creditor to provide certain information relating to security interests.

89. (1) A debtor may request the secured creditor to send or make available to any specified person, at an address specified by the debtor making the request, any of the following information –

(a) a summary of a security agreement that creates or provides for a security interest held by the secured creditor in the movable property of the debtor;

(b) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness;

(c) a written approval or correction of an itemised list of movable property indicating which items are collateral, unless the security interest is over all of the movable property of the debtor; or

(d) a statement of account indicating the payoff amount needed to fully satisfy the secured

obligation.

(2) A secured creditor shall comply with the request made under subsection (1) within 10 working days of its receipt, unless the secured creditor has been exempted under subsection (5).

(3) If, without reasonable excuse, the secured creditor fails to comply with the request within the specified period, the debtor making the request may apply to the Court for an order requiring the secured creditor to comply with the request.

(4) If the request is made and the secured creditor no longer has an interest in the obligation secured or collateral covered by the registration, the secured creditor shall send or make available to the debtor the name and address of the immediate successor in interest or transferee and, if known, the latest successor in interest or transferee.

(5) The Court may, on application by a secured creditor, make an order to exempt the secured creditor from complying with subsections (1) and (2) in whole or in part, or may extend the time for compliance if the Court is satisfied that, in the circumstances, it would be unreasonable for the secured creditor to comply with the request.

(6) A secured creditor who is required to respond to the request may charge the debtor the reasonable costs for providing the information.

(7) A debtor shall be entitled to receive a reply without charge once every 3 months.

(8) If the secured creditor fails to comply with an order of the Court made under subsection (3), the Court may –

(a) issue an order -

(i) declaring that the security interest to which the request relates is to be treated as unperfected or extinguished; and

(ii) directing the Registrar to discharge and remove the registration relating to the security interest; and

(b) make such other orders as it thinks proper for the purpose of giving effect to an order under this section.

Service of documents, etc.

90. (1) Subject to subsection (3), any document that is under this Act or the regulations may be served –

(a) in the case of an individual -

(i) by delivering it to the individual personally;

(ii) by leaving it with an adult person apparently resident at, or by sending it by ordinary post or pre-paid registered post to, the usual or last known address of the place of residence of the individual;

(iii) by leaving it with an adult person apparently employed at, or by sending it by ordinary post or pre-paid registered post to, the usual or last known address of the place of business of the individual;

(iv) by affixing a copy of the document in a conspicuous place at the usual or last known address of residence or business of the individual;

(v) by sending it by facsimile transmission to the fax transmission number given to the Registrar by the individual as the fax transmission number for the service of documents on the individual; or

(vi) by sending it by email to the last email address given to the Registrar by the individual as the email address for the service of documents on the individual;

(b) in the case of a corporation or an unincorporated association -

(i) by delivering it to the secretary or other like officer of the corporation or unincorporated association or, in the case of a corporation that is a limited liability partnership, the manager of the limited liability partnership;

(ii) by leaving it at, or by sending it by ordinary post or pre-paid registered post to, the registered office or principal office of the corporation or unincorporated association in Guyana;

(iii) by sending it by facsimile transmission to the fax transmission number given to the Registrar as the fax transmission number for the service of documents on the corporation or unincorporated association; or

(iv) by sending it by email to the last email

address given to the Registrar by the corporation or unincorporated association as the email address for the service of documents on the corporation or unincorporated association.

(2) Where any document to be served by, or on behalf of, the Registrar is -

(a) served personally in accordance with subsection (1), the document is deemed to have been served on the date that it is delivered;

(b) sent by ordinary post in accordance with subsection (1), the document is deemed to have been served on the person to whom it is addressed on the day after it would in the ordinary course of post be delivered, unless it is returned undelivered;

(c) sent by pre-paid registered post in accordance with subsection (1), the document is deemed to have been served on the person to whom it is addressed 2 days after the day it was posted, whether or not it is returned undelivered;

(d) sent by a facsimile transmission to the fax transmission number in accordance with subsection (l), the document is deemed to have been served on the person to whom it is addressed on the day of the transmission, subject to the receipt on the sending facsimile machine of a notification (by electronic or other means) of a successful transmission to the facsimile machine

for that fax transmission number; or

(e) sent by email to an email address in accordance with subsection (l) the document is deemed to have been served on the person to whom it is addressed at the time the email becomes capable of being retrieved by the person.

(3) A document may be served on a person under this Act or the regulations by email only with prior written consent of the person.

Offences by body corporate.

91. If a body corporate commits an offence under this Act, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management –

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate is found to have committed the offence, shall be deemed to have committed that offence unless, having regard to the nature of the functions of the person in that capacity and to all circumstances, of the person proves –

(i) that the offence was committed without the knowledge, consent or connivance of the person; and

(ii) that the person had taken all reasonable precautions and exercised due diligence to

prevent the commission of the offence.

Regulations.

92. (1) The Minister may make such regulations as the Minister considers necessary or expedient for giving effect to or carrying out the provisions of this Act, including the prescription of fees or other things required to be or which may be prescribed under this Act, and for the due administration of this Act.

(2) Without prejudice to the generality of subsection (1). the Minister may make regulations for or with respect to all or any of the following matters –

(a) the procedures, requirements and other matters in respect of the register and its operation, including the form of access to the register;

(b) the fees and charges payable in connection with any proceedings or matter or in connection with the provision of any service by the Registry;

(c) the procedures, requirements and other matters in respect of any registration under this Act, including –

(i) the description of collateral in initial notices and amendment notices;

(ii) the kinds of goods that may or shall be described by serial number;

(iii) the serial number for various types of goods;

(iv) the data fields, limits on the number of characters, abbreviations or symbols that may be used in initial notices and amendment notices;

(v) the manner of registering initial notices and amendment notices;

(d) providing necessary information to be entered in the Registry to effect, renew, discharge or otherwise amend a registration;

(e) the form of verification statements to confirm a registration;

(f) the procedures, requirements and other matters in respect of searching the Registry, including –

(i) criteria against which a search may be conducted;

(ii) the method of disclosure;

(iii) the form of search results;

(iv) the abbreviations, expansions or symbols that may be used when conducting searches;

(g) the procedures, requirements and other matters in respect of notices under this Act, including prescribing –

(i) the matters in respect of which notices are required under this Act;

(ii) the form of notices under this Act;

(h) the procedures, requirements and other matters in respect of publication of initial notices and opposition to registration of the notices;

(i) anything which may be prescribed or is required to be prescribed under this Act.

(3) Penalties for offences provided in regulations made under this section shall not exceed imprisonment for five years and a fine of three hundred thousand dollars.

PART XI

REPEAL AND TRANSITION

Repeal.

93. (1) The following Acts are repealed to the extent specified –

Cap. 74:07

(a) the whole of the Livestock (Loans for Development) Act;

Cap. 90:12

(b) the whole of the Bills of Sale Act; and

Cap. 90:11

(c) sections 10, 11, 12, 13 and 17 of the Pledge of Goods Act.

Cap. 68:06

(2) The provisions of the Agricultural Loans Act in so far as they provide for crops to be collateral for loans are repealed and a farmer can now avail himself of this Act in obtaining loans in respect of his crops.

Interpretation of terms in this Part.

94. In this Part –

"existing secured creditor" means a holder of a prior security interest;

"prior law" means any law whether statutory, equitable or common law that existed immediately before the commencement of this Act;

"prior security interests" means an interest created or provided for by an agreement or other transaction that was made or entered into before the commencement of this Act and that had not been terminated before that commencement date but does not include a security interest that is renewed or extended by a security agreement or other transaction

made or entered into on or after the commencement of this Act;

"prior repealed written law" means a written law repealed under section 93;

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

"transitional period" means the period of six months commencing on the commencement of this Act.

Prior security interests continue to be enforceable against third parties.

95. A prior security interest that was enforceable against third parties under the prior law shall continue, during the transitional period, to be enforceable against third parties under this Act.

Prior registered security interests deemed to be perfected by registration during transitional period.

96. A prior security interest that, immediately before the commencement of this Act, was registered under prior repealed written law shall, during the transitional period, be deemed to be perfected by registration under this Act.

Other prior security interests deemed to be perfected during transitional period.

97. A prior security interest that, immediately before the commencement of this Act was not registered shall, during the transitional period, be deemed to be perfected by registration under this Act if the prior security interest had (under the prior law and without the collateral relating to that prior security interest being taken into possession by the secured creditor) priority over every other prior security interest (if any).

Prior security interests to be perfected during transitional period.

98. An existing secured creditor may, before the end of the transitional period, perfect that secured creditor's prior security interest under this Act.

Consequences of not perfecting certain security interests.

99. (1) A prior security interest that is deemed to be a perfected security interest under section 96 or 97 and that is not

perfected under this Act within the transitional period shall be deemed to be an unperfected security interest on the close of the transitional period.

(2) If a prior security interest that is deemed to be an unperfected security interest under subsection (1) is perfected after the close of the transitional period, that perfection shall be only effective from the time of that perfection.

Time of registration of certain prior security interests.

100. (1) For the purposes of this Act, the time of registration of a prior security interest that is deemed to be perfected by registration under this Act shall be –

(a) the date that, under the relevant prior repealed written law, determined the priority of the security interest (where the prior security interest is deemed to be perfected by registration under section 96);

(b) the date that the security interest was created (where the prior security interest is deemed to be perfected by registration under section 97).

(2) When the security interest was perfected within the transitional period, it shall have priority from the date that the security interest was registered or created under the prior law.

(3) Subsection (2) does not affect the priority of a later registered fixed charge over an earlier registered floating charge.

(4) For the purposes of this Part, the fixed charge will be deemed to be a purchase money security interest.

Priority of prior security interests during transitional period.

101. (1) During the transitional period –

(a) priority between prior security interests shall be determined by the prior law;

(b) priority between security interest that is deemed to

be perfected by registration under section 96 or 97 and a security interest perfected in accordance with this Act shall be determined by this Act; and

(c) priority between an unperfected prior security interest and another unperfected security interest shall be determined by the order in which they were created.

(2) During the transitional period, prior security interest deemed to be perfected under section 96 or 97 and security interests perfected in accordance with this Act shall have priority over any unperfected interests.

Priority of third party interests during transitional period.

102. During the transitional period –

(a) priority between a prior security interest and a prior third party interest shall be determined by the prior law;

(b) priority between a prior security interest and a third party interest that arose on or after the commencement of this Act shall be determined by this Act; and

(c) priority between a security interest that is not a prior security interest and a prior third party interest shall be determined by this Act.

Explanatory Memorandum

The Security Interests in Movable Property Bill 2024 governs the manner in which credit is secured, by providing a creditor with an interest in a debtor's movable property. All movable property assets qualify as collateral in modern frameworks, regardless of item or type.

Modern legal frameworks for security interests rely on technological innovation and in particular, a centralized electronic registry system which contains all records of security interests in movable property. A modern centralized registry operates in real time. It does so by allowing authorized registrants remote access to the database so that they can actively register their interests directly, without depending upon registry staff to input data.

There is in effect a registry system that is available. It serves as the official source of information for certain forms of security interests in movable property. Under the Bill the Registry would accommodate a finance lease or an assignment of receivables.

Integrating all existing forms of secured interests in movable property, into one framework is no easy task. However, fully-functional legislative models for this task have existed for over fifty years. The principles and policies underlying them are the inspiration for UNCITRAL's *Model Law on Secured Transactions*, now implemented in many jurisdictions in the world.

The Bill provides a modern, integrated legal structure for the regulation of secured loan and credit transactions in Guyana. The policies embodied in the Bill are not major policy changes. They have been part of Guyana's law and practice for many years, in one form of security device or other.

The proposed legal and institutional framework will provide Guyana with the Caribbean's most modern legislation dealing with secured transactions. It will promote access to finance for a broader spectrum of borrowers, especially small and medium-sized enterprises, facilitate infrastructure development and offshore investment in the country and prepare the way for the impending expansion of the oil and gas industry.

Under existing law consensual encumbrances are created pursuant to a bill of sale, a finance lease or hire purchase agreement, or a pledge of tangible goods or documents. Under the Bill all consensual agreements that secure payment or performance of an obligation are considered "security agreements."

Part I of the Bill provides that subject to certain exceptions the Act applies to liens created by operation of the law, a transaction that creates a security interest, a lease of goods for a term of more than one year and an assignment. The interpretation clause provides vital definitions of terms on the subject of security interests in movable property. These definitions enable one to understand the provisions of the Bill. This Part states that the determination of whether the goods are consumer goods, equipment, farm products or inventory has to be made at the time when the security agreement is concluded. The proposed Act will bind the State.

Part II deals with the establishment of the registry system. Currently, some forms of non-possessory secured transactions are registered at the Commercial Registry. The Bill provides that the Registry for the purpose of registration shall be the Commercial Registry. The Registrar may delegate to the Deputy Registrar or Assistant Registrar any of the powers or functions of the Registrar under this Act, except the power of delegation.

Part III provides that a security interest may be created or provided for in movable property by agreement between parties and perfected against third parties. A security agreement is effective according to its terms. This Part specifies the obligations that may be secured and the assets that may be encumbered. It also provides for descriptions in security agreements.

Part IV provides the instances where a security interest is perfected and remains perfected. A security interest is perfected when the security interest is created, and either an initial notice is registered in respect of the security interest, the secured creditor or another person on behalf of the secured creditor has possession of the collateral, or control of the collateral that is a deposit account or investment security.

Part V contains provisions dealing with specific types of security interests, or that apply to security interests in movable property in specific circumstances. It provides, for example, that a security agreement may provide for security interests in after-acquired property, in collateral that gives rise to proceeds, in negotiable instruments, in crops and trees, in fixtures and in goods held by a bailee. It provides for situations where a bailee or carrier relinquishes possession of a negotiable instrument or document of title to facilitate sale of the collateral by the debtor. The security interest remains perfected for a temporary period, notwithstanding the fact that the secured creditor has relinquished possession of the instrument or document.

Part VI provides the statutory priority rules which determine the rights among competing claimants. The general priority rule is based on time and date of registration, or possession. As such, it is based on a factual event that can be easily proven.

The priority rules in this Part also contemplate the commingling or transformation of secured assets as they move through a value chain. This Part also contemplates subordination agreements, in which a prior creditor agrees to subordinate its interest to a subsequent creditor, such as might occur on a merger or company arrangement.

Part VII provides that liens have priority over security interests in the same goods and that a transferee of money and a creditor receiving payment of a debt take the cash free of security interests. It also seeks to provide that certain creditors have priority over certain types of security interests.

This Part also covers transactions that are frequent in the commercial market, and that in general have their own set of rules, such as the rights of holders in due course. These rights are essential to the smooth flow of commerce, and therefore provisions in this Part provide for a statutory override of a security interest in specific circumstances.

Part VIII provides for the initial notice of all secured transactions to be registered in a single, centralized electronic database, housed at the Commercial Registry. Search capacity will be available to anyone.

Instead of lodging the security agreement itself, lenders will simply enter a notice of such agreement in the registry system database. The information required in an initial notice is substantively similar to the content of the current notices of charges and bills of sale published in the Official *Gazette*.

An initial notice can be lodged prior to execution of the security agreement, thus avoiding delays in the lending process. Debtors will be given greater protection by the requirement that registrations be discharged once the debt is satisfied.

Recorded information on all current registrations against a particular debtor or against a serial-numbered item of property will be available through a single registry search.

Part IX deals with default rights and remedies. In accordance with the concept of freedom of contract, the parties can define their own rights and obligations concerning events of default,

and the consequences. However, the parties cannot waive certain provisions in this Part that ensure adherence to the following principles –

(a) The main objective in this Part is to dispose of the collateral as soon as possible after seizure.

(b) The disposition of the asset should be done in a manner that will obtain the best value possible, under the prevailing circumstances. Private rather than public sale might obtain the best price, and therefore non-judicial enforcement is included as a remedy.

(c) It is in the interest of other creditors – and the debtor - to monitor the disposal of the asset by the seizing creditor. They have the most to lose from an improper disposition.

(d) Once the proceeds of disposition are obtained, there are provisions in this Part for their distribution, in accordance with the priorities established in Parts VI and VII, and for a statement of account by the disposing party.

Part X provides for damages that may be awarded to a person for any loss or damage caused by another person due to his failure to discharge any duty or obligation imposed by the proposed Act. A debtor may request the secured creditor to send or make available to any specified person certain information relating to security interests. It deals with service of documents, offences by a body corporate and contains the regulation making power of the Minister.

Part XI provides for repeal of certain written law and transitional provisions.

Although the Bill does not specifically abolish the existing security devices, it does provide a comprehensive code for registration, priorities and remedies upon default based on the substance of a transaction. If in substance the transaction creates a security interest then it is covered by the Bill.

The Bill repeals the Livestock (Loans for Development) Act and Bills of Sale Act and sections 10, 11, 12, 13, and 17 of the Pledge of Goods Act.

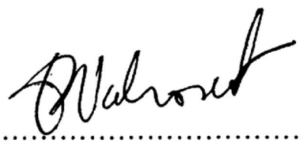
This Part provides that a prior security interest that was enforceable against third parties under the prior law shall continue, during the transitional period, to be enforceable against third parties under the proposed Act.

It provides how other security interests may be deemed to be perfected during the transitional period and for the priority of prior security interests during the transitional period.

The consequence of not perfecting a security interest under this Bill within the transitional period is that the security shall be deemed to be an imperfect security interest.

The time of registration of a previous security interest deemed perfected by registration shall be the date when the security interest was created.

Priority of prior security interests during the transitional period and priority of third party interest during the transitional period shall be determined by the prior law.



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Hon. Oneidge Walrond, M.P.
Minister of Tourism, Industry and Commerce