

**SECURED TRANSACTIONS ACT, 2015***(Act 11 of 2015)***ARRANGEMENT OF SECTIONS****Sections****PART I - PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Application

**PART II - SECURITY INTEREST AND SECURED OBLIGATION**

4. Obligation
5. Description of collateral
6. Attachment of security interest
7. Notice to account debtors not required
8. Continuity of security interest
9. Security interest in consumer goods
10. Security agreement in writing
11. Disclosure of terms of a security agreement

**PART III - PERFECTION OF SECURITY INTEREST**

12. Perfection of security interest
13. Manner of perfection in special case
14. Continuity of perfection
15. Assignment of security interest
16. Lapse of perfection

**PART IV - PRIORITY OF SECURITY INTERESTS**

17. Priority rules
18. Priority continues in proceeds
19. Purchase of secured sales contracts or instruments
20. Transferee exceptions
21. Purchase money security interest
22. Livestock
23. Fixtures

24. Crops
25. Right of retention
26. Accessions
27. Commingled goods
28. Subordination of a security interest

#### **PART V - FILING OF NOTICE OF SECURITY INTEREST**

29. Collateral database
30. Public record
31. Sufficiency of notice
32. Effectiveness of notice
33. Amendment of notice
34. Continuation of notice
35. Termination of notice
36. Objection to a notice
37. Powers of Registrar General to refuse filing of notice
38. Duties of Registrar General
39. Search of collateral database, records and certified report
40. Fees

#### **PART VI - RIGHTS OF SECURED PARTY**

41. Right of secured party upon default by debtor
42. Recovery without judicial process
43. Expedited possession by secured party

#### **PART VII - DISPOSAL OR RETENTION OF COLLATERAL**

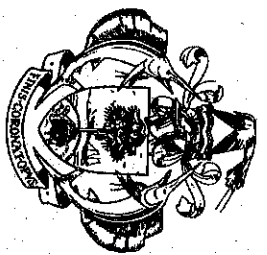
44. Right to dispose of collateral
45. Commercial reasonableness requires
46. Notice of disposition
47. Repair or preparation of collateral
48. Application of proceeds and clear title of buyer
49. Retention of collateral by secured party

#### **PART VIII - RIGHTS OF DEBTOR**

50. Redemption of collateral
51. Remedied for secured party noncompliance

#### **PART IX - MISCELLANEOUS**

52. Offences and penalties
53. Regulations
54. Repeal of Cap 209
55. Amendment of Cap 226



**SECURED TRANSACTIONS ACT, 2015**

*(Act 11 of 2015)*

*I assent*

A handwritten signature in dark ink, appearing to read 'Michel'.

J. A. Michel  
President



*22nd September, 2015*

**AN ACT** to make provisions relating to certain transactions to enable lending secured by movable property, to repeal the Security on Movables Act (*Cap 209*), to make consequential amendments to the Stamp Duty Act (*Cap 226*), and for matters connected therewith or incidental thereto.

**ENACTED** by the President and the National Assembly.

**PART I - PRELIMINARY**

1. This Act may be cited as the Secured Transactions Act, 2015 and shall come into operation on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Short title and commencement

## Interpretation

## 2. In this Act, unless the context otherwise requires—

- (a) “collateral” means movable property subject to a security interest or lien;
- (b) “collateral database” means the collateral database registry maintained by the Registrar General under section 29(1);
- (c) “debtor”, in relation to a secured transaction, means a person of any type, natural or juridical, who owes payment or other performance of a secured obligation, whether or not the person owns or has rights in the collateral;
- (d) “default”, in relation to a security agreement mean a material failure of a debtor to perform under a security agreement;
- (e) “equipment”, in relation to a security agreement, means goods used in the operation of a business that are not crops, livestock, inventory, or consumer goods;
- (f) “future advance”, in relation to a security agreement, means the advance of money, credit or other value secured by a security agreement whether or not such advance is given pursuant to commitment;
- (g) “lien holder” means any person who obtains a right in collateral by operation of law, except a person with a right of retention;
- (h) “Minister” means the Minister responsible for Finance;
- (i) “note” includes an initial note, a note of amendment, a note of continuation, a note of termination and a note of objection;

- (j) “payment intangible” means a right to receive payment of a monetary obligation, other than, an account or a secured sales contract;
- (k) “perfection”, in relation to a security interest, with its grammatical variations, means optimisation of rights of a secured party in collateral against a third party, any other secured party, lien holder or an administrator in an insolvency proceedings;
- (l) “proceeds”, in relation to a collateral, means whatever is acquired upon sale, lease or other disposal of collateral, or whatever is collected on or distributed with respect to collateral and includes 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 payment or other compensation for loss or damage of the collateral;
- (m) “purchase money security interest” means a security interest taken by a seller of goods to secure their price or by a person who gives value to enable a debtor to acquire goods;
- (n) “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;
- (o) “secured party” means a person in whose favor a security interest is created under a security agreement and includes, for the purposes of priority determination and registration, a buyer of accounts or secured sales contracts and a lessor of goods for more than a year;

(p) "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;

(q) "security agreement" means an agreement between one or more secured parties and one or more debtors that creates or provides for a security interest and includes a document evidencing a security interest;

(r) "sign" or "signature" includes the use of any symbol executed or adopted with intention to authenticate, adopt or accept a writing.

3.(1) This Act applies to transactions that secure an obligation with collateral, regardless of the form of the agreement or the terminology used, and whether the collateral is owned by the debtor, the secured party or another person, where all parties to such transaction agree in writing, prior to entering into the transaction, to be bound by this Act.

(2) Subject to subsection (1), this Act applies to the sale of accounts and secured sales contracts and to the lease of goods for more than one year, for the purposes of priority determination and filing of a notice.

(3) No provision of this Act applies to transactions that secure an obligation with collateral under any other Act or regulation.

(4) This Act does not apply to the sale of a business, an assignment for collection action or a pledge of or security interest in notes, bonds, bills or other instruments or debt securities issued by Government or the Central Bank of Seychelles (including under section 10(7) of the Public Debt Management Act or section 42 of the Central Bank of Seychelles Act) or guaranteed by the Republic.

**PART II - SECURITY INTEREST AND SECURED OBLIGATION**

4.(1) A security interest secures performance of an obligation, and for the purposes of perfection and priority, it provides security to a buyer of accounts or secured sales contracts and a lessor of goods for more than one year.

(2) A security interest may secure one or more obligations which may be—

(a) described specifically or generally;

(b) monetary or non-monetary;

(c) pre-existing, present or future (including a future advance);

(d) a current account.

5.(1) A description of a collateral shall reasonably identify the collateral, either specifically or generally.

(2) A collateral which comprises consumer goods requires specific description.

6.(1) A security interest attaches to a collateral and becomes enforceable if—

(a) the debtor has signed a security agreement that describes the collateral;

(b) value has been given by the secured party; and

(c) the debtor has rights in the collateral.

(2) Unless the parties to the transaction agree otherwise, a security interest attaches to proceeds.

7. When a collateral consists of present or future accounts, or secured sales contracts or payment intangibles,

Notice to account debtors not required

Obligations

Description of collateral

Attachment of security interest

notice to the account debtor is not required as a condition of attachment, perfection or enforcement of the security interest.

**8.** A security interest continues in any collateral notwithstanding the sale, lease, license, exchange, or other disposal of the collateral, except as otherwise provided in this Act or agreed upon by the parties.

**9.** A person may not take any security interest in the consumer goods of a debtor other than a purchase money security interest.

**10.** A security agreement shall be in writing and effective between the parties and against purchasers and creditors, except as otherwise provided in this Act.

**11.** A secured party may disclose terms of the security agreement, a more detailed description of the collateral, and the nature and amount of the secured obligation.

### PART III - PERFECTION OF SECURITY INTEREST

**12.** (1) The perfection of a security interest is effected when it attaches to the collateral and completed in accordance with this Part.

(2) The perfection of a security interest may be effected—

- (a) by filing a notice;
- (b) by possession of the collateral;
- (c) by control of the collateral; or
- (d) in a manner provided in paragraph (a) or (e) of section 13.

**13.** A notice shall be filed in the collateral database to perfect a security interest, save that the manner of perfection in the particular instances described in this section is that—

(a) the perfection occurs automatically upon attachment of the security interest in case of a purchase money security interest in consumer goods of the debtor;

(b) the perfection of a security interest in goods, instruments, documents, or secured sales contracts may be effected by the secured party taking possession;

(c) the perfection of a security interest in money may be effected only by the secured party taking possession of the money;

(d) the perfection of a security interest in a deposit account may be effected by the secured party gaining control of the deposit account;

(e) 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; 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.

(f) a lessor or a buyer of accounts or secured sales contracts may effect the perfection in its interest in the same manner as for a security interest;

(g) the perfection of a security interest in a motor vehicle or serial numbered equipment may be effected by filing a notice that describes the motor vehicle or serial numbered equipment by serial number.

Continuity of perfection

14. The perfection of a security interest is effected continuously if it is first effected in one manner and later in another manner, without a period when it is not effected.

Assignment of security interest

15. 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.

Lapse of perfection

16. 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.

#### PART IV - PRIORITY OF SECURITY INTERESTS

Priority rules

17.(1) The security interests and interests of lien holders in the same collateral have priority according to the time of filing of a notice or perfection in another manner, except as otherwise provided in this Act.

(2) The priority is determined from the time of filing of a notice or of perfection in another manner (whichever occurs first), 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 a collateral has priority among security interests for which there is no effective filed notice or other form of perfection.

Priority continues in proceeds

18. The priority of a security interest in proceeds is the same as the priority of the security interest in the original collateral.

Purchase of secured sales contracts or instruments

19. A purchaser of secured sales contracts or instruments has priority over security interest of a secured party in the secured sales contracts or instruments if, in the ordinary course of the purchaser's business, the purchaser gives value and takes possession of the secured sales contracts or instruments, and if the secured sales contracts or instruments

do not indicate an assignment to the secured party.

Transferee exceptions

20.(1) A transferee takes a 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 otherwise 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.

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

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

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

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

Purchase money security interest

21.(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 thereafter.

(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 secured party of the purchase money security interest gives written notice to the holder of the conflicting perfected security interest in the same types of inventory or livestock.

## Livestock

22. A perfected security interest in livestock given for value to enable the debtor to obtain food or medicine for the livestock has priority over any other security interest in the livestock or their proceeds granted by the debtor except for a perfected purchase money security interest in the livestock.

## Fixtures

23.(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 unless a notice of the security interest in the fixtures has been filed in the collateral database established by this Act and, if the right in the immovable property arose after the goods became fixed, filing of notice of the security interest in the fixtures preceded filing of the rights in or seizure of the immovable property.

## Crops

24.(1) A perfected security interest in crops growing or to be grown has priority over a conflicting interest of the owner or mortgagee of the land if the debtor is in possession of the land or has an interest in the land that is filed in accordance with the applicable law.

(2) A perfected security interest in crops or their proceeds, given for value to enable the debtor to produce or harvest the crops and given while the crops are growing crops or during the period of 6 month before the crops were planted has priority over any other security interest in the same collateral given by the same debtor.

(3) 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.

25. A right of retention has priority over a perfected security interest in goods if it arises in the ordinary course of business of the person in possession of the goods.

26.(1) In this section, "accession" means goods that are physically united with other goods in such a manner that the identity of the goods is not lost.

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

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

27.(1) In this section, "commingled goods" means goods that are physically united with other goods in a way that their identity is lost in a product or mass.

(2) A security interest may not be created in commingled goods but 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 and the priority of the security interest in the product or mass is measured from the

## Accessions

## Right of retention

## Commingled goods



time of perfection of the security interest in the collateral that became commingled, except as limited by subsection (4)(c).

(4) If more than one security interest attaches to the product or mass —

- (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 security interest is perfected, the perfected security interests rank equally in proportion to the value of the collateral at the time it became commingled.

Subordination  
of a security  
interest

28. A secured party may, in a security agreement or otherwise, subordinate its security interest to any other interest.

#### PART V - FILING OF NOTICE OF SECURITY INTEREST

Collateral  
database

29.(1) The Registrar General shall establish and maintain a collateral database registry for the purpose of filing of notices in accordance with this Act.

(2) In relation to a transaction to which this Act applies, a person may file a notice of a security interest or other interests in movable property.

(3) The collateral database may have electronic capabilities consistent with this Act, including the provision of electronic means for filing of notices of security interests and

liens, search of notices, access to electronic records created in the collateral database and for obtaining copies of and certification with respect to such notices and electronic records and certified search reports.

(4) A person may file, search or inspect or obtain copies or reports of, the notices and other records of the collateral database in such form and manner as may be prescribed.

30. The information contained in a filed notice, and indexes and other records created by the collateral database with respect to notices are public records.

31.(1) In this section, "correct name" means the name as it appears on —

- (a) in case of a citizen of Seychelles, the National Identity Card;
- (b) in case of a company or other organisation, the document or certificate of its registration or incorporation; or
- (c) in case of a non citizen of Seychelles, his or her passport

(2) An initial notice of security interest may be filed by a secured party and is sufficient if —

- (a) identifies the debtor by the correct name and, if a domestic company or other organisation, by its Seychelles Business Registration Number, if a foreign entity, by its equivalent company identifier, if a citizen of Seychelles, by his or her National Identification Number and if a non-citizen, by his or her passport number and name of the country or other jurisdiction of issuance;

Public record

Sufficiency of  
notice

- (b) identifies the secured party or an agent of the secured party by the correct name and, if a domestic company or other organisation, by its Seychelles Business Registration Number or other official number, if a foreign entity, by its equivalent company identifier, if a citizen of Seychelles, by the his or her National Identification Number and if a non-citizen, by his or her passport number and name of the country or other jurisdiction of issuance); and
- (c) provides the address of debtor and secured party; and
- (d) describes generally or specifically the collateral covered by the notice and, if the collateral is a fixture, the notice describes the immovable property to which a fixture is affixed.
- (3) A debtor shall authorise the filing of an initial note by signing a security agreement or other record.
- (4) An initial notice may be filed before a security agreement is signed or before a security interest attaches to collateral.
- (5) A notice of lien may be filed by a lien holder without the consent of the owner of the property subject to the lien.
- (6) A notice of lien on the property of an insolvent company may be filed by the court or a liquidator constituted by the court.
- (7) A notice of a lien created on the movable property of a judgment debtor may be filed by the person entitled to enforce the judgment.

- (8) A notice substantially complying with the requirements of this Part is effective unless it is seriously misleading.
- (9) For the purposes of subsection (8), a notice that does not identify the debtor in compliance with subsection (2)(a) is seriously misleading.
- 32.(1) An initial notice is effective at the time it is discoverable by a search of the records of notices maintained in the collateral database.
- (2) An initial notice is effective for period, not exceeding 84 months, as specified by the secured party, unless a notice of continuation is filed before the period expires.
- (3) Upon expiry of the period referred to in subsection (2), an initial notice becomes ineffective, and the security interest that was perfected by the initial notice becomes unperfected unless it is perfected by any other means.
- 33.(1) A secured party identified in the initial notice may file a notice of amendment which —
- (a) identifies the initial notice by its filing number;
- (b) identifies each secured party who authorises the notice of amendment; and
- (c) provides all of the information required for an initial note.
- (2) A notice of amendment that adds collateral or adds a debtor shall be authorised by the debtor by signing a security agreement or other record.
- (3) A notice of amendment is effective only as to each secured party who authorises it.

Effectiveness  
of notice.Amendment  
of notice.

(4) A notice of amendment that adds a collateral or a debtor as effective as to the added collateral or debtor from the date of filing of the notice of amendment.

(5) A notice of amendment that adds a secured party as an assignee shall include the information required by section 31(2)(b) with respect to the secured party assignor and to the secured party assignee.

34.(1) The period of effectiveness of an initial notice may be continued by a secured party identified in the initial notice by a notice of continuation that —

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

(2) A notice of continuation may be filed within six months prior to the expiry of the period of effectiveness of the initial notice.

(3) Upon filing of a notice of continuation, the effectiveness of the initial notice is extended as to each authorising secured party for a period, not exceeding 84 months, as specified by the secured party.

35.(1) The effectiveness of an initial notice may be terminated by a secured party identified in the initial notice filing a notice of termination that —

- (a) identifies the initial notice by its filing number;
- (b) identifies each secured party who authorises the notice of termination; and

(c) indicates that the initial notice is no longer effective with respect to each secured party who authorises the notice of termination.

(2) A secured party shall, within 20 days after the secured party receives a written demand by the debtor, file a notice of termination if —

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

(3) A notice of termination terminates effectiveness of the initial notice as to each authorising secured party.

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

Objection  
to a notice

(2) A notice of objection shall —

- (a) identify the initial notice by its filing number;
- (b) identify the person who files the notice of objection; and
- (c) provide the basis for the person's belief that the initial notice is inaccurate or was incorrectly or wrongfully filed.

(3) The filing of a notice of objection does not affect the effectiveness of an initial notice.

37.(1) The Registrar General may refuse to file a notice if —

Powers of  
Registrar General  
to refuse filing  
of a notice

Termination  
of notice

Regard on (a) within the case of an initial notice, it does not  
viresq between identify a debtor by name and otherwise  
quidamnon comply with paragraph section 31(2)(a);

and (b) in the case of a notice of amendment, it does  
not identify a debtor by name and otherwise  
comply with section 31(2)(a), it does not  
provide the filing number of the initial notice  
to which it relates, it identifies an initial  
notice whose effectiveness has lapsed, or it  
does not identify an authorising secured  
party;

(c) in the case of a notice of continuation, it does  
not provide the filing number of the initial  
notice to which it relates, it was not presented  
within the permitted six-month period, or it  
does not identify an authorising secured  
party;

(d) in the case of a notice of termination, it does  
not provide the filing number of the initial  
notice to which it relates, it identifies an  
initial notice whose effectiveness has  
lapsed, or it does not identify an authorising  
secured party;

(e) in the case of a notice of objection, it does not  
provide the filing number of the initial notice  
to which it relates, or it does not identify the  
person who files the notice of objection, or

(f) the fee for filing of notice is not paid or is  
insufficient, or no arrangement authorised  
by the collateral database has been made for  
payment of fees by other means, except  
where the filing fee is waived in accordance  
with the regulations.

(2) If the Registrar General refuses to file a notice, the  
Registrar General shall communicate the fact of, and reason  
for, refusal to the person who presented the notice, or the  
person who presented the notice on behalf of the person who  
presented the notice.

38.(1) The Registrar General shall, in respect of each  
notice filed—

(a) assign a unique filing number that, in the case  
of an initial notice, complies with check digit  
standards for error detection on manually  
input identification numbers;

(b) create a record in collateral database that  
bears the number assigned to the initial notice  
and the date and time of filing;

(c) associates each subsequently filed notice  
with the record of the initial notice to which  
the subsequently filed notice relates; and

(d) maintain the record for public inspection.

(2) The Registrar General shall ensure that the  
collateral database—

(a) indexes notices by the name of the debtor  
and, for notices containing a serial number of  
a motor vehicle or serial numbered  
equipment, by serial number;

(b) maintains the capability to retrieve a record  
by the name of the debtor, by the filing  
number to the initial notice and, for notices  
containing the serial number of motor  
vehicle or serial numbered equipment, by  
serial number;

(c) maintains records of expired and terminated  
notices.

Duties of  
Registrar  
General

Registrar  
General

(3) The Registrar General in filing or refusing to file a notice in the collateral database does not determine or warrant the adequacy, sufficiency, correctness, authenticity, or validity of the notice or of any information contained in the notice.

Search of collateral database, records and certified report

39.(1) The Registrar General shall, in order to give notice of the possible existence of a security interest in collateral, communicate in the prescribed form and manner the following information, to any person who requests it —

- (a) whether there are in the collateral database any effective notices that relate to a particular filing number, debtor name, or vehicle or serial numbered equipment serial number supplied by that person to the Registrar General;
- (b) the filing number, and the date and time of filing of each of such notices;
- (c) the name and related identifying numbers of each debtor and the name and address of each secured party on each of such notes; and
- (d) all of the information contained in each notice.

(2) Upon a request, the Registrar General shall issue in the prescribed form and manner a copy of, and certificate with respect to, each such notice and other record in the collateral database and a certified report of the results of a search.

Fees

40.(1) The fees for filing of a notice shall be prescribed by regulation.

(2) No fee is payable to access or examine the

electronic records of the collateral database by electronic means or for other electronic services.

#### PART VI - RIGHTS OF SECURED PARTY

41.(1) If the debtor defaults in paying or otherwise performing the obligation of the debtor under a security agreement, the obligation under the agreement becomes enforceable by the secured party.

Rights of secured party upon default by debtor

(2) Upon default, the secured party shall have —

- (a) the right to possession or control of the collateral, even if the security agreement is silent about possession or control;
- (b) the right to dispose of the collateral; and
- (c) other rights or remedies provided in the security agreement or otherwise provided in this Act.

42.(1) In this section "bank" means any person licensed under the Financial Institutions Act to conduct banking business.

Recovery without judicial process

(2) Upon default, a secured party with a security interest in an account, secured sales contract or payment intangible may instruct the account debtor to make payment to the secured party, and shall apply such payment to satisfaction of the obligation secured by the security interest after deducting the secured party's reasonable collection expenses.

(3) 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.

(4) If the security interest secures a debt, the secured party shall pay to the debtor any amount collected in excess of

the sum of the secured debt and expenses of collection, and, unless otherwise agreed by the secured party and the debtor, a deficiency continues as an unsecured debt.

(5) Where the secured party and the debtor agree, or after any 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.

(6) The secured party may act under this section without judicial process, notwithstanding any other provision of law.

43.(1) In this section, "breach of the peace" includes entering the premises of the debtor without permission, resorting to physical violence or intimidation, or being accompanied by a law enforcement officer when taking possession or confronting the debtor.

(2) In a case not covered in section 42, the secured party may take possession or control of collateral without legal process if the security agreement so provides or if the debtor has agreed in writing after default, provided that possession or control can be taken without a breach of the peace.

(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.

(4) If, upon default, the secured party cannot take possession or control of a collateral without causing a breach of

the peace, or if the debtor does not agree after default to the removal of a collateral that is a fixture, the secured party apply to the court for taking of possession or control of the collateral.

(5) The application shall contain a statement of the secured party under oath, verifying the existence of the security agreement and identifying the default by the debtor under the security agreement.

(6) The secured party shall serve a copy of the application upon the debtor, including a copy of all documents and evidence submitted to the court in support thereof.

(7) The court shall schedule the hearing of application filed under subsection (4) at the earliest available time, provided that no hearing shall be conducted without the service on the debtor of the application and of reasonable notice of the hearing unless—

(a) the court finds that the secured party has made reasonable efforts to make service on the debtor and that such efforts have not been successful; or

(b) 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 rights of secured party to possession;

(8) If the court finds, at the end of the 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 shall make an order granting the secured party interim possession of the collateral pending final judgment or further order of the court.

(9) The court may by order direct the debtor to take

such action as the court deems necessary and appropriate so that the secured party may take possession.

(10) If the court makes an order under subsection (8) granting the secured party interim possession of the collateral, it may, upon application by the secured party, allow the secured party to sale or other disposal of the collateral under section 44, unless the collateral is rare or unique, or otherwise of such a nature that it is unlikely to be replaceable.

(11) In case of sale or disposal of collateral under subsection (10), the secured party shall retain possession of the proceeds pending the final judgment or further order of the court, unless the court directs otherwise.

(12) A secured party who takes interim possession of collateral under an order issued pursuant to subsection (9) shall use reasonable care in the custody and preservation of collateral in the secured party's possession, pending disposal under subsection (10) or a final judgment or further order of the court.

(13) 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.

#### PART VII - DISPOSAL OR RETENTION OF COLLATERAL

44.(1) Subject to Part VI, a secured party may, on default by the debtor, sell, lease, license or otherwise dispose of the collateral, publicly or privately.

(2) The secured party may act as buyer of the collateral at any public or private sale, auction or any other process of disposition.

Right to  
dispose of  
collateral

45.(1) In disposing of collateral, the secured party shall act in a commercially reasonable manner.

Commercial  
reasonableness  
requires

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

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

(4) If a method of disposal 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 law.

46.(1) The secured party shall, not later than 10 days before the disposal of the collateral, give notice his intention of disposition, to —

Notice of  
disposition

(a) the debtor;

(b) any other secured party or lien holder who, 5 days before the date notice is given, held a security interest or lien in the collateral that was perfected by filing; and

(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 disposal is sufficient if the notice —

(a) identifies the debtor and the secured party;

- (b) describes the collateral;
- (c) states the method of intended disposition; and
- (d) states the time and place of a public sale or the time after which other disposal is to be made.
- (4) The requirement for notice described in subsection (1) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognised market.

Repair or preparation of collateral

47. The collateral may be disposed of by the secured party in its existing condition or after repair, processing or preparation for disposition.

Application of proceeds and clear title of buyer

48.(1) The proceeds of disposal shall be applied in the following order to—

- (a) the reasonable expenses of retaking, holding, preparing for disposal, and disposing of the collateral, including reasonable attorneys' fees and legal expenses incurred by the secured party;
- (b) the satisfaction of debt secured by the security interest;
- (c) the satisfaction of debt 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 shall 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 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.

49.(1) The secured party may, on default, 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 shall give notice of the proposal to—

- (a) the debtor;
- (b) any other secured party or lien holder who, 5 days before the notice is given to the debtor, has perfected its security interest or lien by filings; and
- (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 20 days after the notice was given, the secured party must dispose of the collateral as provided in this Part.

(3) If no objection is received within the 20 day, the secured party may retain the collateral in satisfaction of the debtor's obligation in accordance with the proposal.

#### PART VIII - RIGHTS OF DEBTOR

50.(1) A person who is entitled to receive a notice of disposal may redeem the collateral provided—

- (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, disposal of the collateral; and

Retention of collateral by secured party

Redemption of collateral



(c) the secured party has not irrevocably elected to retain the collateral.

(2) For the purpose of redemption of the collateral, the person shall tender performance of all obligations secured by the collateral, and pay any reasonable expenses that were incurred to seize, hold, repair and prepare the collateral for disposition.

Remedies for secured party non-compliance

51.(1) If the secured party does not comply with the requirements of this Part, the court may order or restrain the disposal of collateral.

(2) If disposal 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 disposal has a right to recover from the secured party any loss caused by a failure to comply with this Part.

#### PART IX - MISCELLANEOUS

52. A person who —

Offences and penalties

- (a) files any notice with an intent to mislead;
- (b) alters any certificate issued under this Act with an intent to mislead;
- (c) falsifies or mutilates any record or other instrument created under this Act;
- (d) destroys without lawful excuse any record or other instrument created under this Act;
- (e) alters without lawful excuse, interferes with, hinders or damages the electronic database provided for under this Act,

commits an offence and shall on conviction be liable to a fine not exceeding SCR400,000 or to imprisonment for a term not exceeding 1 year, or to both such fine and imprisonment.

53. The Minister may make regulations for carrying out the provisions of this Act, which may include all or any of the following matters —

Regulations

- (a) prescribing the form of any notice or application and manner of filing thereof;
- (b) prescribing fees or charges for filing of notices, applications, or issue of certificates, or matter in connection with any service under this Act;
- (c) prescribing any matter which is to be or may be prescribed under this Act.

54.(1) The Security on Movables Act is hereby repealed.

Repeal of Cap 209

(2) Notwithstanding the repeal of the Security on Movables Act and the regulations made thereunder —

- (a) the validity and effect of a transaction that was concluded, and for which an entry was made in the register under the repealed Act, before the commencement of this Act, shall be determined under the repealed Act as if this Act had not enacted;
- (b) any entries made in the register in accordance with section 4(b) of the repealed Act or any application made for opposition lodged before the commencement of this Act, in respect of entries made in the register shall not be affected and continue to exist under the same conditions as entered, provided that in no circumstances shall they be renewed;
- (c) an entry made in the register in accordance with section 4(b) of the repealed Act may be cancelled by the Registrar of Deeds on

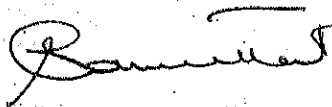
application by the creditor, or, where the debtor satisfies the Registrar of Deeds that the debt has been extinguished or produces written authority from the creditor for the entry to be cancelled, on application by the debtor.

Amendment  
of Cap 226

**55.** The Stamp Duty Act is amended in section 10 by inserting, after subsection (2), the following subsection —

“(3) Any provision of this Act to the contrary notwithstanding, this Act and its various provisions charging duties on instruments shall have no application to any secured transaction under the Secured Transactions Act, 2015 or to any related agreement, document or instrument and any such related agreement, document or instrument is exempt from the provisions of this Act.”

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 22nd September, 2015.



Ms. Shelda Commettant  
Clerk to the National Assembly