

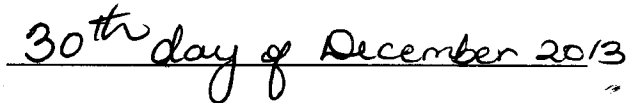
JAMAICA

No. 38 - 2013

I assent,

[L.S.]


Governor-General.



AN ACT to Provide for the creation and registration of security interests in personal property, and for connected matters.

**The date notified by the Minister
[bringing the Act into operation]**

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Security Interests in Personal Property Act, 2013, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette* (hereinafter referred to as the appointed day).

Short title
and
commence-
ment.

PART I. *Preliminary*

Interpretation.

2.—(1) In this Act—

“accessions” means goods that are installed in, or affixed to, other goods, and the term “the whole” used in relation thereto means the accessions together with the goods in or to which they are installed or affixed;

“account debtor” means a person who is obligated under an account receivable;

“accounts receivable” means monetary obligations not evidenced by a financial instrument, whether or not those obligations are earned by performance;

“advance” —

(a) means 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 secured creditor in connection with the advance or the enforcement of the security interest securing the advance;

“after-acquired property” means personal property acquired by a debtor after the security contract is made;

“agency or department of government” includes —

(a) a Ministry;

(b) a statutory body or authority;

(c) any company, registered under the Companies Act, in which the Government or an agency of Government, by the holding of shares, is in a position to direct the policy of that company; and

(d) an Executive Agency designated as such pursuant to the Executive Agencies Act;

“amendment notice” means a notice under section 51(3);

“an organization” means any entity, other than an individual, that has in law the capacity to contract;

“commercial consignment”—

- (a) means a consignment pursuant to which goods are delivered for sale, lease or other disposition to a consignee who, in the ordinary course of business, deals in goods of that description, by a consignor who—
 - (i) in the ordinary course of the consignor's business deals in goods of that description; and
 - (ii) reserves an interest in the goods after they have been delivered;
- (b) does not include an agreement pursuant to which goods are delivered—
 - (i) to an auctioneer for sale; or
 - (ii) to a consignee for sale, lease or other disposition if the consignee is generally known to the creditors of the consignee to be selling or leasing goods of others;

“consumer goods” means goods that are used or acquired for use primarily for personal, family or household purposes;

“continuation notice” means a notice under section 53(2);

“Court” means a Resident Magistrate’s Court or the Supreme Court;

“debtor”—

- (a) means—
 - (i) the person who—
 - (A) owes payment or other performance of the obligation concerned; and

- (B) owns or has rights in the secured property; or
- (ii) if the person who owes payment or other performance of the obligation concerned is not the same as the person who owns or has rights in the secured property—
 - (A) in any provision dealing with the obligation secured, the person who owes payment or other performance of the obligation;
 - (B) in any provision dealing with the secured property, the person who owns or has rights in the secured property; and
 - (C) in any case where the context permits, both the person who owes payment or other performance of the obligation concerned and the person who owns or has rights in the secured property,

and for that purpose, a person who owns or has rights in the secured property includes a transferee or successor of the interest of a person referred to in paragraph (a)(i);

- (b) includes a lessee, a seller of accounts or a consignee;

“electronic” and “electronic document” have the meanings assigned to them by section 2 of the Electronic Transactions Act;

“execution creditor” has the meaning assigned to it by section 32;

“financial asset” means—

- (a) a financial instrument;

- (b) any personal property that is held by a securities dealer for another person in a securities account if the securities dealer has expressly agreed with the other person that the property is to be treated as a financial asset under this Act; or
- (c) a credit balance in a securities account, unless the person maintaining the account has expressly agreed with the person for whom the account is maintained that the credit balance is not to be treated as a financial asset under this Act;

“financial instruments” means—

- (a) debentures, shares, stocks or bonds;
- (b) other securities, including—
 - (i) rights or options in respect of securities;
 - (ii) certificates of interest or participation in any profit sharing agreement;
 - (iii) collateral trust certificates, pre-organization certificates or subscriptions, transferable shares, investment contracts, voting trust certificates and certificates of deposit for securities; and
 - (iv) futures contracts; or
- (c) negotiable instruments;

“goods” means tangible personal property, crops and the unborn young of animals, but does not include a document of title, a financial instrument, or money;

“intangibles” means personal property other than goods, documents of title, or financial instruments, and includes a licence;

“inventory” means goods that are—

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

“lease for a term of more than six months”—

- (a) includes a lease—
 - (i) for an indefinite term that is determinable by one or both of the parties not later than six months after the day of its execution;
 - (ii) a lease initially for a term of six months or less than six months, where—
 - (A) the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for a period of more than six months after the day on which the lessee, with the consent of the lessor, first acquired possession of the goods, so, however, that the lease does not become a lease for a term of more than six months until the lessee’s possession extends for more than six months; or
 - (B) the lease provides that it is automatically renewable at the option of one of the parties or by agreement of the parties, and the total duration of the terms for which the lease is so renewable (including the original term) exceeds six months;

(b) does not include—

- (i) a lease by a lessor who is not regularly engaged in the business of leasing goods;
- (ii) a lease of household furnishings or appliances as part of a lease of land, where those furnishings or appliances are incidental to the use or enjoyment of the land; or
- (iii) a lease of goods which are prescribed for the purposes of this sub-paragraph, regardless of the length of the lease;

“negotiable instrument” means—

- (a) bills of exchange or promissory notes;
- (b) a letter of credit, if the letter of credit states that it must be presented on claiming payment; or
- (c) 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 or assignment;

“personal property” includes goods, documents, financial instruments, accounts receivable, and intellectual property and other kinds of intangibles;

“possessory security interest” means a security interest which under the terms of the security contract requires the debtor to give possession or control of the secured property to the secured creditor in order to secure the performance of the obligation concerned, and “non-possessory security interest” shall be construed accordingly;

“proceeds”—

- (a) means identifiable or traceable personal property—
 - (i) that is derived directly or indirectly from a dealing with secured property or the proceeds of secured property; and

- (ii) in which the debtor acquires an interest;
- (b) includes—
- (i) a right to an insurance payment or other payment as indemnity or compensation for loss or damage to the secured property or its proceeds;
 - (ii) a payment made in total or partial discharge or redemption of a financial instrument or an intangible;
- (c) does not include animals merely because they are the offspring of animals that are secured property, and the term “original secured property” used in relation thereto means the secured property from which the proceeds are derived;

“purchase money security interest” means—

- (a) a security interest taken in secured property, other than financial instruments, by a seller to the extent that it secures the obligation to pay all or part of the purchase price of the secured property;
- (b) a security interest taken in secured property, other than financial instruments, by a person who gives value for the purpose of enabling the debtor to acquire rights in the secured property, to the extent that the value is applied to acquire those rights;
- (c) the interest of a lessor of goods under a lease that creates a security interest for a term of more than six months; or
- (d) the interest of a consignor of goods, who delivers the goods to a consignee under a commercial consignment,

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

“purchaser”, for the purposes of sections 30, 42, 48 and 56, means a person who takes secured property by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue, gift or any other consensual transaction that creates an interest in personal property;

“register” means the electronic register referred to in section 48(1);

“registered” means registered in the Security Interests Registry (and “registration” shall be construed accordingly);

“registrar” means the Registrar of Security Interests designated under section 47;

“registration notice” means a notice in accordance with section 49;

“registry” means the Security Interests Registry established under section 47;

“secured creditor” means the person in whose favour a security interest is created, whether for that person’s own benefit or for the benefit of other persons and includes a lessor or buyer of accounts or a consignor;

“secured property” means the personal property that is the subject of a security interest;

“securities account” means, subject to section 3, an account, held in the books of a duly licensed securities dealer, to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account holds or manages the financial asset on behalf of the person for whom the account is maintained;

“security contract” means a contract which creates a security interest in personal property, being a written contract in the case of a non-possessory security interest, but in the case of a possessory security interest, subject to section 4(2), need not be in writing;

“security interest” means an interest created—

- (a) contractually over one or more items of personal property (whether specifically or generically described, present or future); and
- (b) securing the fulfilment of one or more present or future obligations;

“termination notice” means a notice under section 54(2);

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

“working days” excludes Saturdays, Sundays and public general holidays.

(2) For the purposes of this Act—

- (a) an individual knows or has knowledge when information is acquired by the individual under circumstances in which a reasonable person would take cognizance of it;
- (b) a partnership knows or has knowledge when information comes to the attention of one of the general partners or a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;
- (c) a corporation knows or has knowledge—
 - (i) when information comes to the attention of—
 - (A) a director or officer of the corporation;
or
 - (B) a senior employee of the corporation with responsibility for matters to which the information relates,

under circumstances in which a reasonable person would take cognizance of it; or

- (ii) when information in writing is delivered to the corporation's registered office or attorney for service;
- (d) the members of an association know or have knowledge when information comes to the attention of—
 - (i) a managing director or officer of the association;
 - (ii) a senior employee of the association, who has responsibility for matters to which the information relates;
 - (iii) all members,under circumstances in which a reasonable person would take cognizance of it; or
- (e) a government knows or has knowledge when information comes to the attention of a senior employee of the government, who has responsibility for matters to which the information relates, under circumstances in which a reasonable person would take cognizance of it.
- (3) For the purposes of subsection (2)—
 - (a) a person receives a notice when the notice is given to the person in accordance with section 60 (service of notices);
 - (b) an organization exercises reasonable care if it takes reasonable steps to ensure that significant information is brought to the attention of the individual, within the organization, having responsibility for matters to which a particular transaction relates;
 - (c) nothing in paragraph (b) requires an individual acting on behalf of the organization to communicate information unless the communication is part of that individual's regular duties or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

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

Application. 3.—(1) For the avoidance of doubt, this Act applies to every transaction that in substance creates a security interest in personal property (without regard to the form of the transaction or the person who has title in the personal property) and, without limiting the generality of the foregoing, applies to—

- (a) pledges, trust indentures or trust receipts, equipment trusts, debentures, and floating charges;
- (b) assignments, leases, and consignments, securing payment or the performance of any obligation;
- (c) transfers of accounts receivable, whether or not to secure payment or the performance of any obligation;
- (d) a lease of goods under a lease for a term of more than six months, whether or not to secure payment or the performance of any obligation;
- (e) conditional sale agreements and agreements for the sale of goods on hire-purchase;
- (f) the interest in personal property of an execution creditor.

(2) This Act does not apply to—

- (a) a lien given by any law, except as provided in section 28;
- (b) a deemed trust arising under any enactment;
- (c) a transfer of an interest or claim in or under any policy of insurance or a superannuation fund, except the transfer of a right to money or other value that is payable as indemnity or compensation for loss of, or damage to, secured property;

- (d) the creation or transfer of an interest in real property (including a mortgage, charge or lease of real property), other than—
- (i) an interest in crops, as provided in section 15; or
 - (ii) an assignment of a right to payment under a mortgage, charge or lease, where the assignment does not convey or transfer the assignor's interest in the real property;
- (e) an assignment for the general benefit of creditors;
- (f) an assignment of accounts receivable made solely to facilitate the collection of accounts receivable for the assignor;
- (g) an assignment of an unearned right to payment under a contract to an assignee who is to perform the assignor's obligations under the contract;
- (h) securities for which the Bank of Jamaica acts as registrar pursuant to the Public Debt Management Act or any other enactment;
- (i) securities held in a central securities depository licensed under the Securities Act;
- (j) mortgages of ships and maritime liens;
- (k) except as otherwise provided in this Act, the creation or transfer of an interest in present or future wages, salary, pay, commission or any other compensation for labour or personal services, other than fees for professional services.

(3) The Minister may, by order subject to affirmative resolution and published in the *Gazette*, amend this section so as to include in, or exclude from, subsection (1) or (2) any interest in personal property specified in the order.

(4) For the purposes of subsection (2) (i) and for the avoidance of doubt, nothing construed in this Act as to the priority, or enforcement rights, applicable to security interests under this Act shall be applied to,

or enforced against, any securities sold or purchased through a central securities depository licensed under the Securities Act.

PART II. Creation and Perfection of Security Interests

Creation of security interests.

4.—(1) A non-possessory security interest may only be created by contract in writing, between the parties, in accordance with subsection (3).

(2) In the case of a possessory security interest, the consent of the debtor to the possession of the secured property for the purposes of the creation of a security interest shall be evidenced in writing.

(3) The security contract shall sufficiently describe the secured property, and for the purposes of this subsection, a description of secured property in a security contract is sufficient if it—

- (a) describes the secured property in a manner that enables the secured property to be identified;
- (b) consists of a statement that a security interest is taken in all of the debtor's present and after-acquired property; or
- (c) consists of a statement that a security interest is taken in all of the debtor's present and after-acquired property except for specified items or kinds of personal property.

(4) Except as otherwise provided by this Act or any other law, a security contract is effective—

- (a) according to its terms;
- (b) against any person who takes the secured property by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue, gift or any other consensual transaction that creates an interest in personal property; and
- (c) against execution creditors.

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

- (a) the debtor has the right or ability—
 - (i) to use, commingle, or dispose of all or part of the secured property, including returned or repossessed goods;

- (ii) to collect, compromise, enforce, or otherwise deal with secured property;
 - (iii) to accept the return of secured property or make repossessions; or
 - (iv) to use, commingle, or dispose of proceeds; or
- (b) the secured creditor fails to require the debtor to account for proceeds or replace secured property.

(6) For the purposes of subsections (1) and (2), “writing” includes an electronic document, and a requirement for a written signature in relation to any such electronic document shall mean an electronic signature within the meaning of section 2 of the Electronic Transactions Act.

5.—(1) A security interest attaches to secured property and is enforceable against the debtor and third parties as provided in this Act when—

Attachment
of security
interest.

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

(2) Unless otherwise agreed by the debtor and the secured creditor, the attachment of a security interest in—

- (a) secured property gives the secured creditor the right to proceeds of the secured property even if the security contract is silent about proceeds;
- (b) secured property is also attachment of a security interest in a supporting obligation for the secured property;
- (c) a right to payment or performance secured by a security interest in personal property is also attachment of a security interest in the personal property;
- (d) a right to payment or performance secured by a security interest in a mortgage in real property is also attachment of a security interest in the mortgage;
- (e) a securities account is also attachment of a security interest in any rights or benefits derived from financial assets credited to the securities account.

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

(4) Subsection (3) applies—

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

(5) Where a security contract has been modified or substituted in the manner described in subsection (3), the assignee obtains rights

that correspond to the rights of the assignor under the modified or substituted contract.

(6) Nothing in subsections (3) to (5) affects the validity of a term in an assignment agreement that provides that a modification or substitution is a breach of contract by the assignor.

6. In the case of a non-possessory security interest, the debtor shall, unless otherwise specified in the security contract, have the following rights and obligations in respect of the property—

Rights and obligations of debtor who retains possession.

- (a) the right to use and dispose of the property, and any proceeds derived therefrom, in the ordinary course of the debtor's business;
- (b) the obligation to discontinue the exercise of the right referred to in paragraph (a) once the secured creditor notifies the debtor of the secured creditor's intention to enforce the security interest in accordance with this Act;
- (c) the obligation to do whatever is reasonably necessary to prevent damage to, or loss of, the property; and
- (d) the obligation to allow the secured creditor to inspect, at all reasonable times, the property to verify its quantity, quality and state of conservation.

7. A secured creditor in possession of the secured property—

Rights and obligations of secured creditor in possession.

- (a) shall exercise reasonable care in the custody and preservation of the property;
- (b) shall maintain the property in such a way that it remains identifiable, unless it is perishable; and
- (c) may use the property only as agreed by the parties to the security contract.

8.—(1) A right conferred by a security interest shall be enforceable against third parties only when the security interest is perfected.

Effect of perfecting a security interest.

(2) A security interest is perfected when the conditions set out in subsection (3) are met, regardless of the order in which the meeting of the conditions occurs.

(3) The conditions referred to in subsection (2) are that—

- (a) the security interest has attached; and
- (b) either—
 - (i) the security interest is registered in accordance with this Act; or
 - (ii) the secured creditor, or his agent specifically authorised for that purpose, has possession or control of the secured property.

(4) Except as otherwise provided in this Act, a security interest perfected by—

- (a) registration under this Act takes effect against third parties from the moment of its registration; or
- (b) possession or control, takes effect against third parties from the moment that the secured creditor takes possession or control.

(5) A security interest perfected by one method under this Act is continuously perfected under this Act if—

- (a) the security interest is perfected in another way under this Act; and
- (b) there is no intervening period between the methods of perfection during which the security interest is unperfected under this Act.

(6) The secured creditor may, in accordance with the terms of the security contract, authorise the debtor to dispose of the secured property free of encumbrance.

Perfection of
security
interests in
relevant
accounts.

9.—(1) Notwithstanding any law to the contrary, a security interest in a relevant account, may be perfected by control of the relevant account.

(2) For the purposes of this Act, a secured creditor has control of a relevant account if—

- (a) the secured creditor is the financial institution with which the relevant account is maintained, whether it is the financial institution or the debtor who retains the right to direct the disposition of funds or other assets from the relevant account;
- (b) the debtor, secured creditor, and the financial institution with which the relevant account is maintained have agreed, in writing signed by those parties, that the financial institution will comply with instructions originated by the secured creditor directing disposition of the funds or other assets in the relevant account without further consent by the debtor; or
- (c) the secured creditor becomes a customer, with respect to the relevant account, of the financial institution with which the relevant account is maintained.

(3) Nothing in subsection (2) prevents the subsequent creation of a security interest in a relevant account in any case falling within that subsection, but any such subsequently created security interest shall not, unless otherwise agreed by the secured creditor referred to in subsection (2), have priority over the security interest of the secured creditor.

(4) In this section—

“financial institution” means any—

- (a) licensed deposit-taking institution;
- (b) licensed securities dealer;
- (c) registered co-operative society duly authorised to accept deposits; or
- (d) body corporate registered to carry on any class of insurance business under the Insurance Act;

“relevant account” means a deposit account or a securities account or an account held with a body corporate registered to carry on any class of insurance business under the Insurance Act.

PART III. *Special Provisions for Security Interests in Particular Kinds of Personal Property*

After-acquired property.

10.—(1) A security contract may create a security interest in after-acquired property.

(2) A security interest in after-acquired property attaches without specific appropriation by the debtor.

(3) Subsection (2) does not apply where—

- (a) the after-acquired property is consumer goods, other than accessions or consumer goods which replace the secured property described in the security contract; or
- (b) the after-acquired property is consumer goods and the security interest in those consumer goods is not a purchase money security interest.

Dealings and proceeds.

11.—(1) Except as otherwise provided in this Act, a security interest in secured property that is dealt with—

- (a) continues in the secured property, unless the secured creditor expressly authorised the dealing; and
- (b) where the dealing gives rise to proceeds, extends to the proceeds.

(2) A security interest in proceeds is continuously perfected by registration that —

- (a) contains a description of the proceeds that would be sufficient to perfect a security interest in secured property of that kind; or
- (b) contains a description of the original secured property, if—
 - (i) the proceeds are of a kind that are within the description of the secured property;
 - (ii) the proceeds are cash proceeds;
 - (iii) the proceeds consist of a payment made in total or partial discharge or redemption of intangible property;

- (iv) the proceeds consist of a right to an insurance payment, or any other payment as an indemnity or compensation, for loss or damage to the secured property or its proceeds.

(3) A security interest in proceeds is temporarily perfected until the expiration of fifteen working days after the original secured property is converted to those proceeds, if—

- (a) the security interest in the original secured property is perfected; and
- (b) the security interest in the proceeds is not continuously perfected under subsection (2).

12. A security interest in a financial instrument is temporarily perfected until the expiration of fifteen working days after the secured creditor makes the financial instrument available to the debtor, if—

Financial instruments returned to secured debtor.

- (a) the security interest was perfected by possession; and
- (b) the secured creditor gives possession of the instrument to the debtor for sale, exchange, presentation, collection, renewal, or registration of a transfer.

13. A security interest in a negotiable document of title, or in goods held by a bailee and not covered by a negotiable document of title, is temporarily perfected until the expiration of fifteen working days after the secured creditor makes the title or goods (as the case may be) available to the debtor, if—

Negotiable document of title or goods returned to debtor.

- (a) the security interest was perfected by possession; and
- (b) the secured creditor delivered the title or goods for the purpose of sale or exchange, or loading, unloading, storing, shipping, manufacturing, processing, packaging or otherwise dealing with the goods in preparation for their sale or exchange.

Goods held
by bailee.

14. A security interest in goods in the possession of a bailee is perfected when the security interest attaches and—

- (a) a registration notice in respect of the security interest in the goods is registered;
- (b) the bailee issued a negotiable document of title to the goods and the security interest in the negotiable document of title to the goods is perfected; or
- (c) the bailee, being a person who is not the debtor —
 - (i) issues a document of title in the name of the secured creditor; or
 - (ii) holds the goods on behalf of the secured creditor under section 8(3)(b)(ii).

Crops.

15.—(1) Except as otherwise provided in this Act, a security interest in crops is a security interest in the crops while they are in the form of seeds or other germinating material, while they are growing, and afterwards when they are cut, picked, or separated from the soil.

(2) For the purposes of determining whether a security interest exists in crops that are cut, picked, or separated from the soil, it is immaterial whether the crops are stored on the land where the crops were grown or on any other land or premises.

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

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

(5) If a secured creditor has an interest in crops that has priority over the claim of persons having an interest in the real property, the secured creditor may, unless otherwise agreed, remove the crops from the real property if the secured creditor reimburses any encumbrancer or owner (as the case may require) of the real property, other than the debtor, for the cost of repairing any physical injury to the value of the real property caused by the removal (other than any

diminution in the value of the real property caused by the removal of the crops or by the necessity for replacement).

(6) A person entitled to reimbursement under subsection (5) may refuse permission to remove the crops until the secured creditor has given adequate security for the reimbursement.

PART IV. Circumstances in Which Buyer or Lessee Takes Free of Security Interest

16. A buyer or lessee of secured property who acquires the secured property for value takes the secured property free of any unperfected security interests in the property, except for any unperfected security interest created or provided for by a transaction to which that buyer or lessee is a party.

Unperfected security interests.

17. A buyer or lessee of goods from a seller or lessor acting in the ordinary course of the seller or lessor's business takes the goods free of any security interest given by the seller or lessor, or that arises under section 11(1) (continuity of security interests in proceeds), whether or not the buyer or lessee knows of it, unless the buyer or lessee (as the case may be) knows that the sale or lease constitutes a breach of the security contract pursuant to which the security interest was created.

Buyer or lessee in the ordinary course of business.

18.—(1) A buyer or lessee of goods acquired as consumer goods takes those goods free of any security interest if the total value of the goods did not exceed ten thousand dollars at the time the security interest attaches, or, if there is more than one security interest in the goods, at the time the security interest having first priority attaches.

Consumer goods not exceeding certain value.

(2) The Minister may, by order published in the *Gazette*, alter the amount specified in subsection (1).

19.—(1) A buyer or lessee of a motor vehicle takes the motor vehicle free of any security interest perfected by registration, if—

Motor vehicle.

(a) the buyer bought, or the lessee leased, the motor vehicle without knowledge of the security interest; and

- (b) the motor vehicle was not correctly described by serial number in the registration of the registration notice in respect of the security interest pursuant to section 49.

(2) In this Act, “serial number” with reference to a motor vehicle means the identification number inscribed on the motor vehicle and used for the purposes of motor vehicle registration.

(3) This section does not apply to motor vehicles held as inventory by a dealer of motor vehicles and sold in the ordinary course of business.

Temporarily
perfected
security
interests.

20. A buyer or lessee of goods takes the goods free of any security interest temporarily perfected under section 11(3) (temporary perfection of proceeds) or 13 (temporary perfection of negotiable document of title or goods returned to debtor), if—

- (a) the buyer or lessee (as the case may be) gave new value for the interest acquired; and
- (b) the buyer bought, or the lessee leased, the goods without knowledge of the security interest.

Money or
financial
instruments.

21. The holder of money, or a transferee of a financial instrument who in the ordinary course of the transferor’s business takes possession of the instrument (complete with any necessary endorsements of the instrument), takes the money or instrument (as the case may be) free of any security interest, if the holder or transferee—

- (a) acquired the money or the instrument without knowledge of the security interest; and
- (b) is a holder or transferee for value, whether or not the holder or transferee knew of the security interest at the time the holder or transferee acquired the money or the instrument.

PART V. Priority of Security Interests

Priority as
between
security
interests.

22.—(1) If this Act provides no other way of determining priority between security interests in the same secured property—

- (a) a perfected security interest has priority over an unperfected security interest in the same property;

- (b) priority between unperfected security interests in the same secured property is ranked by the order in time at which the security interest attaches, with the earliest in time taking first priority;
- (c) priority between continuously perfected security interests in the same secured property is ranked by the order in time at which the security interests satisfy any of the following conditions (with the earliest in time taking first priority)—
 - (i) the security interest is registered under this Act;
 - (ii) the secured creditor, or his agent duly authorised for that purpose, takes possession or control of the secured property, other than possession or control resulting from seizure or repossession; or
 - (iii) the security interest is temporarily perfected by virtue of any provision of this Act.

(2) For the purposes of subsection (1)—

- (a) a continuously perfected security interest shall be treated at all times as perfected by the method by which it was originally perfected;
- (b) the time of registration, possession, control or perfection of a security interest in original secured property is also the time of registration, possession, control or perfection (as the case may require) of its proceeds;
- (c) a security interest that is transferred has the same priority as it had at the time of the transfer; and
- (d) in the case of a security interest which provides for future advances, the security interest has, subject to section 32(4), the same priority in respect of all advances, including future advances.

(3) Notwithstanding subsection (1), the priority of security interests may be modified by written agreement between the secured creditors concerned, unless such modification is prohibited by any law, and the registration of an amendment notice to reflect any such agreement is not required.

**Purchase
money
security
interests.**

23.—(1) A purchase money security interest in—

- (a) **secured property, other than intangibles (which, for the avoidance of doubt includes accounts receivables and relevant accounts) or inventory; or**
- (b) **the proceeds of secured property covered by paragraph (a),**

has priority over a non-purchase money security interest in the same secured property given by the same debtor if the purchase money security interest in the secured property or its proceeds is perfected not later than fifteen working days after the time the debtor, or another person at the request of the debtor, obtains possession of the secured property.

(2) Subject to section 11, a purchase money security interest in inventory or its proceeds has priority over a non-purchase money security interest in the same inventory, given by the same debtor, if—

- (a) **the purchase money security interest in the inventory is perfected at the time the debtor, or another person at the request of the debtor, obtains possession of the secured property (whichever is earlier);**
- (b) **the secured creditor gives a notice to any other secured creditor who has, before the time of registration of the purchase money security interest, registered a registration notice containing a description that includes inventory of the same items or kind; and**
- (c) **the notice mentioned in paragraph (b)—**
 - (i) **states that the person giving the notice expects to acquire a purchase money security interest in inventory of the debtor and describes the inventory by item or kind; and**
 - (ii) **is given before the debtor, or another person at the request of the debtor, obtains possession of the secured property (whichever is earlier).**

(3) Where secured property consists of intangibles or the proceeds of intangibles, a purchase money security interest in the secured property or its proceeds has priority over a non-purchase money security interest in the same secured property given by the same debtor if the purchase money security interest is perfected not later than fifteen working days after the day on which the security interest attaches.

(4) Notwithstanding subsections (1), (2) and (3), a security interest in accounts receivable—

- (a) as original secured property and not as the proceeds thereof; and
- (b) that is given for new value,

has priority over a purchase money security interest in the accounts receivable as proceeds of inventory if a registration notice covering the security interest in the accounts receivable is registered before the purchase money security interest is perfected or a registration notice covering the purchase money security interest is registered.

(5) A purchase money security interest in goods or their proceeds taken by a seller, lessor or consignee of the goods, has priority over any other purchase money security interest in the same secured property given by the same debtor if the first mentioned purchase money security interest is perfected—

- (a) in the case of inventory, at the time the debtor, or another person at his request, obtained possession of the secured property; or
- (b) in the case of secured property, other than inventory, not later than fifteen working days after the day on which the debtor, or another person at his request, obtained possession of the secured property.

(6) In a transaction other than a transaction relating to consumer goods, a purchase money security interest remains a purchase money security interest even if—

- (a) the secured property also secures an obligation that is not a purchase money obligation;

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

Relevant
accounts.

24.—(1) The security interest of a secured creditor in a relevant account which that secured creditor has control of, has priority over a security interest, in that relevant account, of a secured creditor that does not have control of the relevant account.

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

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

(4) A security interest in a relevant account, which is perfected by control, has priority over a security interest in the relevant account held by the financial institution with which the relevant account is maintained.

(5) In this section, “financial institution” and “relevant account” have the meanings assigned to them, respectively, by section 9.

Accessions.

25.—(1) A security interest in goods that become accessions continues in the accessions.

(2) Except as otherwise provided in this Act, a security interest in goods that attaches at the time when the goods become accessions has priority over a claim to the goods as accessions made by a person with an interest in the whole.

(3) The interest of any of the following persons has priority over a security interest in goods that is attached at the time when the goods become accessions—

- (a) a person who, for value, acquires an interest in the whole after the goods become accessions, but before the security interest in the accession is perfected;

- (b) an assignee, for value, of a person with an interest in the whole at the time when the goods become accessions, but before the security interest in the accessions is perfected;
- (c) a person with a perfected security interest in the whole who makes an advance, under the security contract relating to that security interest, after the goods become accessions but before the security interest in the accessions is perfected, but only to the extent of the advance;
- (d) a person with a perfected security interest in the whole who, after the goods become accessions but before the security interest in the accessions is perfected, acquires the right to retain the whole in satisfaction of the obligation secured.

(4) A security interest in goods, that attaches after the goods become accessions, is subordinate to the interest of—

- (a) a person who has an interest in personal property to which the goods become accessions and who—
 - (i) has not consented to the security interest in the accessions;
 - (ii) has not disclaimed an interest in the accessions;
 - (iii) has not entered into an agreement under which another person is entitled to remove the accessions; and
 - (iv) is otherwise entitled to prevent the debtor from removing the accessions; or
- (b) a person who acquires an interest in the whole after the goods become accessions but before the security interest in the accessions is perfected.

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

Processed or
commingled
goods.

(2) For the purposes of this section and section 22(1)—

- (a) perfection of a security interest in goods that subsequently become part of a product or mass shall be treated as perfection of the security interest in the product or mass;
- (b) any priority that a security interest continuing in the product or mass has over another security interest in the product or mass is limited to the value of the goods on the day on which they became part of the product or mass;
- (c) a perfected security interest continuing in the product or mass has priority over an unperfected security interest continuing in the same product or mass;
- (d) if more than one perfected security interest continues in the same product or mass, each perfected security interest is entitled to share in the product or mass according to the ratio that the obligation secured by the perfected security interest bears to the sum of the obligations secured by all perfected security interests in the same product or mass;
- (e) if more than one unperfected security interest continues in the same product or mass, each unperfected security interest is entitled to share in the product or mass according to the ratio that the obligation secured by the unperfected security interest bears to the sum of the obligations secured by all unperfected security interests in the same product or mass;
- (f) the obligation secured by a security interest does not exceed the value of the goods on the day on which the goods become part of the product or mass.

(3) Notwithstanding paragraphs (c) to (f) of subsection (2), a perfected purchase money security interest in goods that continues in the product or mass has priority over—

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

27.—(1) The rights of a debtor in secured property may be transferred consensually, or by operation of law, notwithstanding a provision in the security contract prohibiting transfer or declaring a transfer to be an act of default of the contract.

Transferred property.

(2) A transfer of rights in secured property by the debtor shall not prejudice the rights of the secured creditor, arising under the security contract or otherwise, including the right to treat a prohibited transfer as an act of default.

(3) If a debtor transfers an interest in secured property that, at the time of the transfer, is subject to a perfected security interest, that security interest has priority over any other security interest granted by the transferee, except to the extent that the security interest granted by the transferee secures advances made or contracted for—

- (a) after the expiration of fifteen working days from the date that the secured creditor who holds the security interest in the transferred secured property had knowledge of the information required to amend the registration notice concerned to reflect the transferee as the debtor; and
- (b) before the secured creditor referred to in paragraph (a) took possession of the secured property or amended the registration notice concerned to reflect the transferee as the debtor.

(4) Subsection (3) shall not apply in any circumstances under this Act where the transferee acquires the debtor's interest free of the security interest of the secured creditor.

(5) Notwithstanding subsections (3) and (4), if a security interest is perfected by registration and the debtor transfers all or part of his interest in the secured property with the prior consent of the secured creditor, the security interest in the transferred property is subordinate to—

- (a) an interest, other than a security interest in the transferred property, arising during the period commencing on the expiration of the fifteenth day after the transfer and ending at the time the secured creditor amended the registration notice concerned to reflect the transferee as the new debtor or took possession of the property;

- (b) a perfected security interest in the transferred property that is registered or perfected during the period referred to in paragraph (a); and (c) a perfected security interest, in the transferred property, that is registered or perfected after the transfer and before the expiration of the fifteenth day after the transfer, if before the expiration of the fifteenth day—
- (i) the registration notice in respect of the security interest first referred to in this subsection is not amended to reflect the transferee of the interest in the secured property as the debtor; or
 - (ii) the secured creditor does not take possession of the property.

(6) Notwithstanding subsections (3) and (4), subsection (7) applies where a security interest is perfected by registration and the secured creditor has knowledge of—

- (a) information required to amend the registration notice concerned to reflect the transferee as the debtor, in any case where all or part of the transferor's interest in the secured property is transferred; or
- (b) the new name of the debtor, if there has been a change in the debtor's name.

(7) The security interest in the transferred property, where subsection (6)(a) applies, or, where subsection (6)(b) applies, in the secured property, is subordinate to—

- (a) an interest, other than a security interest in that property, arising during the period commencing on the expiration of the fifteenth day after the secured creditor has the knowledge referred to in subsection (6) and ending at the time the secured creditor amends the registration notice concerned to reflect the transferee as the debtor, or reflect the new name of the debtor (as the case requires), or takes possession of the property;

- (b) a perfected security interest in the secured property that is registered or perfected after the secured creditor has the knowledge referred to in subsection (6) and before the expiration of the fifteenth day referred to in paragraph (a), if, before the expiration of the fifteenth day—
 - (i) the registration notice in respect of the security interest first referred to in this subsection is not amended to reflect the transferee as the debtor or to disclose the new name of the debtor (as the case requires); or
 - (ii) the secured creditor does not take possession of the property.

(8) If the debtor's interest in part or all of the secured property is transferred by him without the consent of the secured creditor and there are one or more subsequent transfers of the secured property without the consent of the secured creditor before the secured creditor acquires knowledge of the name of the most recent transferee, the secured creditor—

- (a) is deemed to have complied with subsection (7) if the secured creditor amends the registration notice concerned not later than fifteen days after acquiring knowledge of the name of the most recent transferee of the secured property and all other information required to effect registration of the security interest; and
- (b) need not effect or amend the registration of the security interest to reflect any intermediate transferee.

(9) For the purposes of this section, “transfer” includes a sale, the creation of a security interest, and a transfer under proceedings to enforce the judgment of any court.

*Priority Against Other Types of Interest
in Secured Property*

28. A lien arising out of materials or services provided in respect of goods that are subject to a security interest in the same goods has priority over that security interest if— Liens.

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

- (b) the lien has not arisen under an enactment 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 of providing the materials or services, know that the security contract concerned contained a provision prohibiting the creation of a lien by the debtor.

Creditors who receive payment of a debt.

29.—(1) A person who receives payment of a debt owed to him by a debtor, through a payment initiated by the debtor, has priority over a security interest in—

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

(2) Subsection (1) applies whether or not the person had knowledge of the security interest at the time of the payment.

(3) For the purposes of subsection (1), “payment initiated by the debtor” includes a payment made by the debtor through the use of—

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

Holders of negotiable documents of title.

30.—(1) The interest of a holder of a negotiable document of title, or a purchaser of a negotiable instrument, has priority over a perfected security interest in the document of title or the instrument (as the case may be) if the holder or purchaser—

- (a) gave value for the document of title or the instrument;
- (b) acquired the document of title or the instrument without knowledge of the security interest; and
- (c) in the case of a purchaser of a negotiable instrument, took possession of the instrument.

(2) For the purposes of subsection (1), the holder of a negotiable document of title who acquired it under a transaction entered into in the ordinary course of the transferor's business has knowledge only if the holder acquired the interest with knowledge that the transaction is a breach of the security contract concerned.

(3) For the purposes of this section, "negotiable document of title" means a writing issued or addressed to a bailee—

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

31.—(1) The rights of an assignee of an account receivable are subject to— Assignees of accounts receivable.

- (a) the terms of the contract between the account debtor and the assignor and any defence or claim arising from the 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 acquires knowledge of the assignment.

(2) Subsection (1) does not apply if the account debtor on an account receivable has made an enforceable agreement not to assert defences to claims arising out of the contract.

(3) In this section—

"assignee" includes a secured creditor and a receiver.

32.—(1) The interest of an execution creditor in any secured property has priority over any security interest in the same property, if the security interest is not perfected at the time of registration of the interest of the execution creditor under section 55. Execution creditors.

(2) In this Act—

- (a) "execution creditor" means a person entitled to take possession of personal property pursuant to a writ in aid of

execution, charging order, order of attachment, a garnishee order, or other similar process issued by a court for the recovery of debt; and includes a trustee in bankruptcy or liquidator in relation to any such property;

- (b) for the avoidance of doubt, an execution creditor does not include a landlord who exercises a right of distress.

(3) Notwithstanding subsection (1), a purchase money security interest has priority over the interest of an execution creditor in—

- (a) secured property, other than intangibles, if the purchase money security interest is perfected not later than seven days after the day on which—
- (i) the debtor obtains possession of the secured property; or
 - (ii) another person, at the request of the debtor, obtains possession of the secured property,

whichever is earlier; or

- (b) an intangible, if the purchase-money security interest is perfected not later than seven days from the day on which the security interest attaches.

(4) A perfected security interest has priority over the interest of an execution creditor only to the extent of advances made—

- (a) before the secured creditor acquired knowledge of the interest of the execution creditor; or
- (b) before a notice of the interest of the execution creditor is registered under section 55.

PART VI. *Enforcement of Security Interests*

Application
of Part.

33.—(1) This Part does not apply to—

- (a) a transaction described in section 3 (1) (d), unless that transaction creates a purchase money security interest;
- (b) the interest of an execution creditor; or

- (c) a transaction in which a person pledges property to a pawnbroker.

(2) The exercise of a right or remedy under this Part shall be without prejudice to any other rights or remedies available under this Part, this Act, or any other law.

(3) A security interest is not subsumed by another security interest merely because a secured creditor has obtained a judgment against the debtor.

34.—(1) Where a debtor is in default under a security contract, the secured creditor has against the debtor—

Procedure upon default.

- (a) the rights, remedies and obligations provided in the security contract;
- (b) the rights, remedies and obligations provided by any other law, to the extent that that they are not inconsistent with this Act;
- (c) the rights, remedies and obligations provided in this Act including (but not limited to) sections 15 (crops) and 25 (accessions); and
- (d) where the secured creditor is in possession or control of the secured property, the rights, remedies and obligations provided in section 7.

(2) On default under a security contract—

- (a) the secured creditor has, unless otherwise agreed between the parties, the right to take possession of the secured property or otherwise enforce the security contract by any method permitted by law;
- (b) if the security interest is perfected by registration and the secured property is of a kind that cannot be readily moved from the premises where the property is located or is of a kind for which adequate storage facilities are not readily available, the secured creditor may seize or repossess the

in any manner by which a writ in aid of execution may provide for seizure without removal; and

- (c) where paragraph (b) applies, the secured creditor may dispose of secured property on the premises concerned, but shall not cause the person in possession of the premises any greater inconvenience and cost than is necessarily incidental to the disposal.

(3) Subsection (2) applies subject to the provisions of this section, sections 15 (5) and (6) (crops) and section 25 (accessions), and any rule of law requiring prior notice.

(4) Where the secured property concerned is a document of title, the secured creditor may—

- (a) proceed under this Part either as to the document of title or as to the property covered by it; and
- (b) any method of enforcement that is available with respect to the document of title is also available, with any necessary modification, with respect to the property covered by it.

Enforcement
re accounts
receivable,
financial
instruments
or
intangibles.

35.—(1) In the event of default under the terms of a security contract, a secured creditor may in the case of secured property which is an intangible or a financial instrument—

- (a) notify the debtor (or any other person obligated to make payment under the financial instrument) to make payment or otherwise render performance to the secured creditor, whether or not the secured creditor was making collections on the secured property before the notification; and
- (b) subject to section 36 (disposition; of secured property), take control of any proceeds to which the secured creditor is entitled; and
- (c) apply any money, accounts receivable, or security in the form of a debt obligation, taken as secured property, to the satisfaction of the obligation secured by the security interest

(2) A secured creditor may deduct reasonable expenses of collection from any—

- (a) amounts collected from a debtor on an intangible or from a person obligated to make payment under a financial instrument; or
- (b) money held as secured property.

(3) Notice under this section to an account debtor is not a condition for—

- (a) the attachment or perfection of a security interest in accounts receivable;
- (b) the assignment or transfer of accounts receivable; or
- (c) the enforcement of a security interest in accounts receivable, except as provided in this section.

(4) Where secured property that is an intangible is assigned, the account debtor may make payments under the security contract to the assignor—

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

(5) Payment by an account debtor to an assignee under a notice mentioned in subsection (4) (a) discharges the obligation of the account debtor to the extent of the payment.

(6) Where the secured property is a licence, the secured creditor may seize the secured property by giving notice to the debtor, or to the grantor of the license or any successor to the interest in the licence.

Disposition
of secured
property.

36.—(1) After seizing or repossessing secured property as permitted by this Part, a secured creditor may, after giving notice as required by section 37—

- (a) dispose of the property in its existing condition or after repairing, processing or preparing the secured property for disposition; and
- (b) apply the proceeds of the disposition consecutively to—
 - (i) the reasonable expenses of seizing, repossessing, holding, repairing, processing or preparing for disposition and disposing of the secured property and any other reasonable expenses incurred by the secured creditor in enforcing the security interest; and
 - (ii) the satisfaction of the obligations secured by the security interest of the party making the disposition;

and any surplus arising from the disposition shall be dealt with in accordance with section 38 (surplus or deficiency on disposition).

(2) The disposition of secured property pursuant to subsection (1) may be—

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

(3) A secured creditor may delay disposition of secured property in whole or in part.

(4) A secured creditor has a duty to act in good faith to obtain the best price reasonably obtainable at the time when disposing of secured property pursuant to this Part, and that duty shall be deemed to have been discharged where the disposition of secured property is made in a commercially reasonable manner as provided in subsection (5).

(5) A disposition of secured property is made in a commercially reasonable manner if the disposition is made—

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

(6) For the purposes of subsection (5), the fact that a greater amount could have been obtained by a disposition at a different time or by a different method from that selected by the secured creditor is not of itself sufficient to preclude the secured creditor from establishing that the disposition was made in a commercially reasonable manner.

(7) A disposition shall be deemed to be commercially reasonable if it has been approved in a judicial proceeding or by an assignee for the benefit of creditors.

37.—(1) Not less than seven days prior to disposing of secured property pursuant to this Part, the secured creditor shall deliver a notice of the disposition to—

Obligation to give notice of disposition.

- (a) the debtor;
- (b) any other person who is known by the secured creditor to be an owner of the secured property; and

(c) any creditor or other person with a security interest in the secured property, whose interest is subordinate to that of the secured creditor, if—

(i) prior to the day on which the notice of the disposition is given to the debtor, that creditor or other person has registered a registration notice identifying the debtor or, if the secured property is a motor vehicle, identifying the motor vehicle by serial number; or

(ii) the security interest of that creditor or other person is perfected by possession at the time when the secured creditor seized or repossessed the secured property; and

(d) any other person with an interest in the secured property, who has given a written notice to the secured creditor of that person's interest in the secured property prior to the date on which the notice of the disposition is given to the debtor.

(2) A notice under subsection (1), where given by a secured creditor, shall contain—

(a) a description of the secured property;

(b) the amount required to satisfy the obligation secured by the security interest;

(c) the amount of applicable expenses or, where the amount of the expenses has not been determined, a reasonable estimate; and

(d) in the case of disposition by sale by public auction—

(i) the date, time and place of such sale;

(ii) where the sale is to proceed by way of closed tenders, the place to which closed tenders may be delivered, the date after which closed tenders will not be accepted; and

- (iii) the date after which any private disposition of the secured property may be made.

(3) A notice under subsection (1), where given by a receiver, shall contain—

- (a) a description of the secured property;
- (b) a statement that, unless the secured property is redeemed, it will be disposed of; and
- (c) in the case of disposition by sale by public auction—
 - (i) the date, time and place of such sale;
 - (ii) where the sale is to proceed by way of closed tenders, the place to which closed tenders may be delivered, the date after which closed tenders will not be accepted; and
 - (iii) the date after which any private disposition of the secured property may be made.

(4) A notice under this section is not required where—

- (a) the secured property is perishable;
- (b) the secured creditor believes on reasonable grounds that the secured property will decline substantially in value if it is not disposed of immediately after default;
- (c) the cost of care and storage of the secured property is disproportionately large in relation to its value;
- (d) the secured property is of a type that is to be disposed of by sale in an organized market that handles large volumes of transactions between many different sellers and many different buyers;
- (e) the secured property is money authorized or adopted by a foreign government as part of its currency;

- (f) after default, each person entitled to receive a notice of disposition consents in writing to the disposition of the secured property without compliance with the notice requirements of this section; or
- (g) for any other reason, the Court on an application made to it without notice is satisfied that a notice under this section is not required.

(5) Notwithstanding any other provision of this Part, where the secured property is a licence, the secured property may be disposed of only in accordance with the terms and conditions that applied at the time that the secured creditor took control of the licence.

Surplus or
deficiency on
disposition.

38.—(1) Subject to subsection (5), where a secured creditor has dealt with the secured property under section 35 (enforcement re accounts receivable, financial instruments or intangibles) or has disposed of it in accordance with section 36 (disposition of secured property) or otherwise, any surplus arising from the dealing or disposition shall, unless otherwise provided by law or by agreement of all interested parties, be accounted for and paid out consecutively as follows—

- (a) firstly, in satisfaction of the obligations due to each person (in order of their priority ranking) who has a security interest in the secured property and—
 - (i) who, before the distribution of the surplus, registers a registration notice identifying the debtor or, if the secured property is a motor vehicle, identifying the motor vehicle by serial number; or
 - (ii) whose interest was perfected by possession at the time when the secured property was seized;
- (b) secondly, to any other person with an interest in the surplus, if that person has given a written notice of that interest to the secured creditor prior to the distribution; and
- (c) thirdly, to the debtor or any other person who is known by the secured creditor to be an owner of the secured property,

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

(2) The secured creditor concerned shall give a written accounting of—

- (a) the amount received from the disposition of the secured property or the amount collected under section 35 (enforcement re accounts receivable, financial instruments or intangibles), as the case may require;
- (b) the manner in which the secured property was disposed of;
- (c) the amount applied to expenses as provided by section 6 (rights and obligation of secured creditor in possession), 35 (enforcement re accounts receivable, financial instruments or intangibles), and 36 (disposition of secured property);
- (d) the distribution of the amount received from the disposition or collection; and
- (e) the amount of any surplus,

to any person mentioned in subsection (1) within thirty days after receipt of a written request by that person for an accounting.

(3) Where there is any question as to who is entitled to receive payment under subsection (1), the secured creditor may pay the surplus into the Court, and the surplus shall not be paid out except on an order made on an application under section 44 (application to Court) by a person claiming an entitlement to it.

(4) Except as otherwise agreed by the parties or as otherwise provided by this Act or any other law, the debtor is liable to pay to the secured creditor the amount of any deficiency arising on any collection or disposition of secured property under this Part.

(5) Nothing in this section applies to a disposition in any proceedings under the Bankruptcy Act or on a winding up under the Companies Act.

Retention of
secured
property by
secured
creditor.

39.—(1) A secured creditor who is entitled to exercise any right or remedy under section 34 may propose to take the secured property in full or partial satisfaction of the obligation secured by it and shall give notice of the proposal to—

- (a) the debtor and any other person who is known by the secured creditor to be an owner of the secured property;
- (b) any creditor and any other person with a security interest in the secured property, whose interest is subordinate to that of the secured creditor, and—
 - (i) who, prior to the day on which notice is given to the debtor, has registered a registration notice identifying the debtor or, if the secured property is a motor vehicle, identifying the motor vehicle by serial number; or
 - (ii) whose security interest is perfected by possession when the secured creditor seized or repossessed the secured property; and
- (c) any other person with an interest in the secured property who has given written notice to the secured creditor of that interest prior to the day on which the notice is given to the debtor.

(2) Subject to subsections (3) and (6), if before the expiration of thirty working days after notice is given under subsection (1) a person entitled to receive a notice under subsection (1) gives to the secured creditor notice of objection to the secured creditor's proposal under subsection (1), the secured creditor shall not proceed under subsection (1).

(3) If no notice of objection is given under subsection (2), the secured creditor—

- (a) is, at the expiration of the period mentioned in subsection (2), deemed to have irrevocably elected to take the secured

property in full or partial satisfaction of the obligation secured by it, in accordance with the terms of the proposal; and

- (b) may hold or dispose of the secured property free from all rights and interests of the debtor and from the rights and interests of any person entitled to receive, and who has been given, notice under—
 - (i) subsection (1) (b); or
 - (ii) subsection (1) (c) if the person's interest is subordinate to that of the secured creditor.

(4) If a secured creditor has the right to retain secured property under subsection (3), all secured obligations are deemed to have been performed for the purposes of section 54 (termination notices).

(5) A secured creditor may request that any person who gives a notice of objection under subsection (2), other than the debtor, furnish proof of that person's interest and, unless the person furnishes proof not later than thirty days after the secured creditor's request, the secured creditor may proceed as if no objection were received from the person.

(6) On application by a secured creditor, the Court may determine that an objection to the proposal of a secured creditor is ineffective on the ground that—

- (a) the person made the objection for a purpose other than the protection of an interest in the secured property or proceeds of a disposition of the secured property; or
- (b) the market value of the secured property is—
 - (i) in the case of a proposal to take the secured property in full satisfaction of the obligations secured by it, less than the total amount owing to the secured creditor and the costs of disposition; or
 - (ii) in the case of a proposal to take the secured property in partial satisfaction of the obligations secured by it, less than the amount of debt which it is proposed will be satisfied by the taking of the secured property and the costs of disposition.

Purchase of secured property by secured creditor. **40.** The secured creditor may purchase the secured property or any part of it, if the purchase is at a public sale for a price that bears a reasonable relationship to the market value of the secured property, or part thereof (as the case may be).

Debtor's right to redeem secured property. **41.** At any time before—

- (a) a secured creditor or a receiver has disposed of secured property, or contracted for its disposition, pursuant to this Part; or
- (b) a secured creditor is deemed to have irrevocably elected to retain secured property, by virtue of section 39,

any person who is entitled to receive a notice of the disposition under section 37 (obligation to give notice of disposition) may, unless that person otherwise agrees in writing after default, redeem the secured property by tendering to the secured creditor—

- (i) fulfilment of the obligations secured by the secured property; and
- (ii) a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the secured property for disposition, if those expenses have actually been incurred by the secured creditor, and any other reasonable expenses incurred by the secured creditor in enforcing the security contract.

Rights of purchasers of secured property. **42.** Where a secured creditor disposes of secured property to a purchaser who takes possession of the secured property for value and in good faith—

- (a) the purchaser acquires the secured property free from—
 - (i) the interest of the debtor;
 - (ii) any interest subordinate to that of the debtor; and
 - (iii) any interest subordinate to that of the secured creditor,

whether or not the requirements of this Part have been complied with by the secured creditor; and

- (b) all obligations secured by the subordinate interests mentioned in paragraph (a) are deemed to be performed for the purposes of a termination notice.

43.—(1) Subject to any other law to the contrary, where the same obligation is secured by an interest in a mortgage in real property and a security interest in personal property, the secured creditor may—

Enforcement of parallel obligation secured by an interest in a mortgage.

- (a) without limiting the secured creditor's rights, remedies and obligations, proceed under this Part in respect of the personal property; or
- (b) proceed under this Part in respect of both the interest in the mortgage and the personal property.

(2) Nothing in subsection (1) (b) shall be construed as limiting the rights of another secured creditor who has a security interest in personal property that is taken before or after the security interest mentioned in subsection (1), and that other secured creditor—

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

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

44. On the application of a debtor, a creditor of a debtor, a secured creditor, a person carrying out a writ in aid of execution, or a person claiming an interest in secured property, the Court may make any one or more of the following orders—

Application to Court.

- (a) an order, including a declaration of a right and an order for injunctive relief, that is necessary to ensure compliance with this Part or section 7 (rights and obligations of secured creditor in possession), 15 (crops) or 25 (accessions);

- (b) an order giving directions to any person regarding the exercise of any right or the discharge of any obligation under this Part or section 7, 15, or 25;
- (c) an order relieving a person from compliance with any requirement of this Part or section 7, 15, or 25;
- (d) an order staying the enforcement of any right conferred by this Part or section 7, 15, or 25; or
- (e) any order that is necessary to ensure protection of the interest of any person in the secured property.

Enforcement
of security
interests in
accessions.

45.—(1) A secured creditor who is entitled to take possession of any accessions under section 25 shall—

- (a) before removing the accessions, and subject to subsection (9), give not less than ten working days notice of his intention to remove the accessions to—
 - (i) every person whom the secured creditor knows to have an interest in the goods to which the accessions are installed or affixed, or in the whole; and
 - (ii) any person who has registered a security interest in the goods in or to which the accessions are installed or affixed, or in the whole, and concerning the same debtor;
- (b) in taking possession of the accessions, remove the accessions from the whole in a manner that causes no greater damage to the other goods, or that puts the person in the possession of the whole to no greater inconvenience, than is necessarily incidental to the removal of the accessions.

(2) Every notice under subsection (1) (a) shall contain—

- (a) the name and address of the secured creditor;
- (b) a description of the accessions to be removed;
- (c) a description of the goods in or to which the accessions are installed or affixed;

- (d) the amount due to the secured creditor and a good faith estimate of the value of the accessions if the accessions were removed from the goods in or to which they are installed or affixed; and
- (e) a statement of the secured creditor's intention to remove the accessions unless the lesser of the amount secured or the value of the accessions is paid on or before a date specified in the notice, being not less than ten working days from the date on which the notice is given.

(3) A person, other than the debtor, who has an interest in goods in or to which accessions are installed or affixed at the time when the accessions are installed or affixed, is entitled to be reimbursed by the secured creditor for any damage to the person's interest in the goods caused by the removal of the accessions.

(4) An obligation to reimburse under subsection (3) does not include an obligation to reimburse for any reduction in the value of the property caused by the absence of the accessions or by the necessity of replacing the accessions.

(5) A person entitled to reimbursement under subsection (3) may give the secured creditor notice in writing refusing permission to remove the accessions until the secured creditor concerned gives adequate security for the reimbursement, and the secured creditor shall not be entitled to remove the accessions until permission is given by the person or an order is made under subsection (6) (d).

(6) On an application made by a secured creditor, the Court may make an order—

- (a) determining who is entitled to reimbursement under subsection (3);
- (b) determining the amount and kind of security to be provided by the secured creditor under subsection (5);
- (c) prescribing a depository for the security referred to in subsection (5); or
- (d) dispensing with the need for permission of any or all persons entitled to reimbursement under subsection (5).

(7) On an application made by a person entitled to be given notice under subsection (1) (a), the Court may make an order—

- (a) postponing the removal of the accessions; or
- (b) determining the amount payable to the secured creditor under subsection (8).

(8) A person, other than the debtor, who has an interest in the whole that under this Act is subordinate to a security interest in the accessions, may retain the accessions on payment to the secured creditor having the security interest that takes priority over all other security interests in the accessions, the lesser of—

- (a) the amount due to the secured creditor; or
- (b) the value of the accessions if the accessions were removed from the goods in or to which they are installed or affixed.

(9) The requirement to give notice under subsection (1) (a) shall not apply if—

- (a) the secured creditor believes on reasonable grounds that the secured property will decline substantially in value if it is not disposed of immediately after default;
- (b) the cost of care and storage of the secured property is disproportionately large in relation to its value; or
- (c) for any other reason the Court, on an application made without notice, is satisfied that notice under subsection (1) (a) is not required.

Receivers.

46.—(1) A security contract may provide for the appointment of a receiver and, except as provided in this Act or any other law, for the rights and duties of a receiver.

(2) On application by an interested person, the Court may—

- (a) appoint a receiver, notwithstanding the absence in the security contract of any provision for the appointment of a receiver;
- (b) remove, replace or discharge a receiver, whether appointed by a court or under a security contract;

- (c) give directions on any matter relating to the duties of a receiver;
 - (d) notwithstanding anything contained in a security contract, approve the accounts and fix the remuneration of a receiver;
 - (e) notwithstanding anything contained in a security contract, make an order requiring a receiver, or a person by or on behalf of whom the receiver is appointed, to make good any default arising in connection with the receiver's custody, management or disposition of the secured property or any other property of the debtor or to relieve the person from any default or failure to comply with this Part;
 - (f) exercise with respect to receivers appointed under a security contract the jurisdiction that it has over receivers appointed by the Court.
- (3) A receiver appointed under subsection (1) or (2) shall—
- (a) take custody and control of the secured property in accordance with the security contract or order of the Court under which the receiver is appointed (as the case may be), but shall not carry on the business of the debtor unless the security contract or order of the Court so permits;
 - (b) where the debtor is a company, forthwith notify the company's directors of the appointment and discharge of the receiver; and
 - (c) open and maintain, in the receiver's name as receiver, one or more accounts, at a financial institution licensed to accept deposits, in which shall be deposited all money that comes under the receiver's control as receiver;
 - (d) keep records, in accordance with accepted accounting practices, of all receipts, expenditures and transactions that involve secured property or other property of the debtor;
 - (e) prepare, at least once in every six-month period after the date of the appointment, financial statements of the receivership;

- (f) indicate on every business letter, invoice, contract or similar document used or executed in connection with the receivership that the receiver is acting as a receiver; and
- (g) on completion of the receiver's duties, prepare a final account of the receivership in the prescribed form and send a copy of the final account to the debtor and, where the debtor is a company, to the directors of the company.

(4) The debtor and, where the debtor is a company, the directors of the company or their authorized representative may, by a demand in writing delivered to the receiver, require the receiver to make available for inspection the records mentioned in subsection (3) (d) during regular business hours at the place of business of the receiver in Jamaica.

(5) The debtor and, where the debtor is a company, the directors of the company, a person carrying out a writ in aid of execution, a person claiming an interest in any secured property in the custody or control of the receiver, or the authorized representative of any of them, may, by a demand in writing delivered to the receiver, require the receiver to provide copies of the financial statements mentioned in subsection (3) (e) or the final account mentioned in subsection (3) (g) or to make them available for inspection during regular business hours at the place of business of the receiver in Jamaica.

(6) The receiver shall comply with a demand made under subsection (4) or (5) not later than fourteen days after receiving the demand.

(7) A receiver may require the payment in advance of a fee in the prescribed amount for each demand made under subsection (4) or (5) to the receiver.

(8) The powers mentioned in subsection (2) and in section 44 (application to Court) are in addition to any other powers the Court may exercise in its jurisdiction over receivers.

(9) Unless the Court orders otherwise, a receiver is required to comply with sections 36 (disposition of secured property) and 38

(surplus or deficiency on disposition) only where the receiver disposes of secured property other than in the course of operating the business of a debtor.

(10) For the purposes of this Part, the term “secured creditor” applies to a receiver acting under this Part, except in the case of sections 39 (retention of secured property by secured creditor), 40 (purchase of secured property by secured creditor), 41(b) (election to retain secured property) and 43 (enforcement of parallel obligation secured by an interest in a mortgage).

(11) Subject to section 38(5), in the event of any conflict between the provisions of this Act and the Companies Act or any other law, in respect of a receiver, the provisions of this Act shall prevail.

PART VII. *Registration*

47.—(1) There is hereby established a Security Interests Registry. Registry.

(2) There shall be a Registrar of Security Interests, who shall be designated as such by the Minister.

(3) The Registrar shall be responsible for ensuring that the Register is maintained in accordance with this Act, and for the performance of the functions assigned to the Registrar by this Act or any other law, which functions may be carried out by any member of staff of the Registry under the direction of the Registrar.

48.—(1) The Register for the purposes of this Act shall be maintained in electronic form that provides for— Register.

(a) the filing, in an electronic Register of Security Interests, of all registration notices, amendment notices, and termination notices, registered under this Part; and

(b) the assignment of a registration number (which shall be a unique identification number) to each such notice, together with a notation of the date and time of the filing.

(2) A notice mentioned in subsection (1) is registered at the time that a registration number, date and time is assigned to it in the Register, and the Registrar shall thereupon cause to be created a printable written statement bearing that information.

(3) The Registrar shall maintain the Register in a state of availability for public inspection, including the capability to view any registration notice filed in the Register by inputting a search of any of the following data—

- (a) the name or taxpayer registration number of the debtor;
- (b) the registration number of the registration notice, in a manner that associates the registration notice with all related amendment notices and termination notices;
- (c) in the case of a motor vehicle, the serial number of the motor vehicle, if a serial number was provided in the notice in a field prescribed by the Registrar.

(4) Where the registration of a notice is affected by the failure of the Registrar to observe any requirement mentioned in subsection (1), (2) or (3), the notice remains effective except against a purchaser of secured property covered by the notice, who gives value in reasonable reliance upon the information available from the Register.

(5) The Registrar shall maintain records of lapsed or terminated registration notices (including all associated amendment, continuation and termination notices) for a period of ten years beyond the date of the lapse or termination, as the case may be.

(6) Subject to the provisions of this Act, registration of a notice in the registry is not constructive notice or knowledge of its existence or contents to any person.

(7) For the purposes of this Part, “registration number” means the number assigned in accordance with subsection (1) (b).

Registration
notices.

49.—(1) A registration notice filed for the purposes of this Part shall—

- (a) sufficiently identify the debtor, and state the debtor’s business or residential address and taxpayer registration number;
- (b) sufficiently identify the secured creditor, and state the secured creditor’s business or residential address;
- (c) state the amount of the principal indebtedness or other obligations secured by the security interest covered by the notice; and

(d) describe the secured property covered by the notice.

(2) A registration notice may relate to one or more security contracts and may identify more than one debtor or more than one secured creditor.

(3) A registration notice may be registered before or after a security contract has been concluded and before or after the security interest has attached.

(4) A person may register a registration notice under this section only if the debtor concerned authorizes the registration.

(5) For the purposes of subsection (4), authorization by the debtor —

- (a) need not be contained in the registration notice;
- (b) need not be disclosed to the Registrar;
- (c) may be given after registration, of the registration notice; and
- (d) in any case where the debtor signs a security contract, shall be deemed to have been given to the filing of a registration notice covering—
 - (i) the secured property described in the security contract; and
 - (ii) the proceeds of the secured property (whether or not the security contract expressly covers proceeds).

(6) The failure of a person who registers a registration notice in the capacity of agent of a secured creditor to indicate that capacity in the notice, shall not affect the validity of the notice.

(7) A registration notice remains effective with respect to secured property that is sold, exchanged, leased, licensed, or otherwise dealt with, and in which the security interest continues, even if the secured creditor knows of the sale, exchange, lease, license or other dealing.

(8) The registration of an amendment notice or termination notice under this Part by a secured creditor does not affect the rights of any other secured creditor identified in the registration notice concerned.

Sufficiency
of
identification.

50.—(1) A person or entity is sufficiently identified in a notice for the purposes of this Part if—

- (a) in the case of an individual who is a citizen of Jamaica, the notice states the name of the individual;
- (b) in the case of an individual who is not a citizen of Jamaica, the notice states the name of the individual as stated in the individual's passport;
- (c) in the case of an entity established by the Constitution of Jamaica or under any other enactment, the notice states the name of the entity as provided by the Constitution or other enactment;
- (d) in the case of a company incorporated under the Companies Act, the notice states the name of the company as stated in its certificate of incorporation, being the most recent certificate as amended to reflect any change of name;
- (e) in the case of a company not domiciled in Jamaica, the name of the company as depicted in the appropriate registry where the company is domiciled.

(2) A notice that sufficiently identifies a person or entity under subsection (1) is not rendered ineffective by the presence or absence of a trade name or other name of that person or entity.

(3) A notice that provides the trade name of a person or entity but does not comply with subsection (1) does not sufficiently identify that person or entity.

Amendment
notices.

51.—(1) Subject to subsection (4), a registration notice may, with written authorization signed by any of the secured creditors concerned, be amended by the registration of one or more amendment notices in accordance with this section.

(2) For the purposes of subsection (1), the written authorization of the creditor need not be disclosed to the Registrar or set out in the notice.

(3) An amendment notice for the purposes of subsection (1) shall—

- (a) identify the registration notice concerned by registration number and state that it is an amendment to that registration notice;
- (b) identify the secured creditor who authorizes the amendment; and
- (c) provide all of the information required for a registration notice, by completely restating the registration notice in a manner that reflects the amendment.

(4) Written authorization signed by the debtor concerned is required—

- (a) to add secured property to a registration notice; or
- (b) to add the name of that debtor to a registration notice already registered under this Part.

(5) For the purposes of subsection (4), authorization by the debtor—

- (a) need not be contained in the amendment notice;
- (b) need not be disclosed to the Registrar;
- (c) may be given after the registration of the amendment;
- (d) in any case where the debtor signs a security contract that adds secured property to a security interest, shall be deemed to have been given to the registration of an amendment notice covering—
 - (i) the secured property described in the security contract; and
 - (ii) the proceeds of the secured property (whether or not the security contract expressly covers proceeds); and

(e) shall be deemed to have been given to the registration of an amendment notice that identifies that debtor, in any case where that debtor signs a security contract in respect of property covered by a registration notice already registered under this Part and identifying another debtor.

(6) An amendment notice that—

- (a) adds secured property to a registration notice is effective, as to the secured property added; or
- (b) adds a debtor to a registration notice is effective, as to the debtor added,

only from the date of registration of the amendment notice.

(7) An amendment notice that purports to delete the identification of—

- (a) all the secured creditors, without providing sufficient identification of one or more additional secured creditors; or
- (b) all the debtors, without providing sufficient identification of one or more additional debtors,

shall be void and of no effect.

(8) The registration of an amendment notice shall not have the effect of extending the duration of a registration notice.

Effects of defects, irregularities, etc.

52.—(1) The validity of the registration of a notice under this Part is not affected by any defect, irregularity, omission, or error, in the registration form unless the defect, irregularity, omission or error is materially misleading.

(2) Without limiting the circumstances in which a registration is invalid under subsection (1), the registration of a notice is invalid if there is a materially misleading defect, irregularity, omission or error in—

- (a) the name of any of the debtors identified in the notice, other than a debtor who does not own or have rights in the secured property; or

(b) the serial number of the secured property described in the notice, if the secured property is a motor vehicle.

(3) Within twenty-one days after the date on which a secured creditor has knowledge of any change in circumstances which would render a registration notice materially misleading, the secured creditor shall file an amendment notice in respect of the change, and where the secured creditor fails to do so, the registration notice becomes invalid upon the expiration of the aforementioned twenty-one days.

(4) Except as provided in subsection (3), a registration notice that is not materially misleading at the time of registration remains effective if after the notice is registered a change of circumstances renders the registration notice materially misleading.

(5) For the purposes of this section, in order to establish that a defect, irregularity, omission, or error is materially misleading, it is not necessary to prove that any person was actually misled by it.

53.—(1) A registration notice, unless terminated under any provision of this Act, shall be effective for whichever is the earlier of— Duration.

- (a) the expiration of the term indicated in the registration notice; or
- (b) the expiration of ten years commencing on the date on which and the time at which the notice was registered,

and shall thereafter lapse unless a continuation notice is registered, in accordance with this section, at any time before the lapse of the notice.

(2) A continuation notice shall—

- (a) identify, by registration number, the registration notice concerned;
- (b) identify the secured creditor, identified in the registration notice, who authorizes the registration of the continuation notice; and

- (c) state that the effectiveness of the registration notice, with respect to that secured creditor is to be continued.

(3) Where a continuation notice is registered in accordance with this section—

- (a) the effectiveness of a registration notice is continued only with respect to the secured creditor who authorised the registration of the continuation notice; and
- (b) the effectiveness of the registration notice continues for a further period of ten years from the date on which the notice would have lapsed under subsection (1) and thereafter lapses unless another continuation notice is registered in accordance with this section.

(4) Successive continuation notices may be registered for the purposes of this section.

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

(6) Where a security interest becomes unperfected upon lapse of a registration notice, the security interest is deemed never to have been perfected against a purchaser of the secured property for value.

Termination
notices.

54.—(1) The effectiveness of a registration notice may be terminated by the registration of a termination notice in accordance with this section.

- (2) A termination notice shall—
 - (a) identify, by registration number, the registration notice concerned;
 - (b) identify the secured creditor, identified in the notice, who authorizes the registration of the termination notice; and
 - (c) state that the registration notice is no longer effective with respect to the interest of the secured creditor who authorizes the registration of the termination notice.

(3) A termination notice registered in accordance with this Part terminates the effectiveness of a registration notice with respect to a secured creditor identified pursuant to subsection (2) (b) only if that secured creditor authorizes, in writing signed by that secured creditor, the registration of the termination notice.

(4) The written authorisation signed by the secured creditor for the purposes of subsection (4) need not be disclosed to the Registrar and need not be set out in the notice.

55.—(1) The Court may, upon the application of an execution creditor—

Notice of interest of execution creditor.

- (a) at the time when judgment is entered for the execution creditor or any time thereafter, in the case of a judgment for the payment of money; or
- (b) at the time of the filing of a bankruptcy petition or a petition for winding-up (as the case may be), by the execution creditor,

direct that a notice under this section be entered in the Register.

(2) A notice under this section shall—

- (a) identify the execution creditor concerned;
- (b) identify the person owing payment or performance of an obligation to the execution creditor; and
- (c) describe the property against which the execution creditor claims, or may claim, a right.

56.—(1) The Registrar may refuse registration of a notice under this Part if—

Refusal of registration.

- (a) in the case of a registration notice, the notice does not identify a debtor;
- (b) in the case of an amendment notice, the notice does not identify a debtor, does not provide the registration number of the registration notice concerned, or purports to amend a registration notice that has been terminated;

- (c) in the case of a continuation notice, the notice does not provide the registration number of the registration notice concerned or was not submitted for registration within the time allowed under section 53;
- (d) in the case of a termination notice, the notice does not provide the registration number of the registration notice concerned, or the notice purports to terminate a registration notice that has been terminated with respect to each secured creditor identified in the notice; or
- (e) the applicable registration fee has not been paid in full.

(2) Where registration of a notice is refused other than on any of the grounds specified in subsection (1), the notice is effective except as against a purchaser of secured property that gives value in reasonable reliance on the absence of the notice in the Register.

(3) Where registration of a notice is refused in any case, the Registrar shall forthwith communicate the fact of, and reason for, the refusal to the person who submitted the notice for registration.

(4) A person aggrieved by a decision of the Registrar under this section or section 57 may apply to the Supreme Court for an order under subsection (5).

(5) On an application under subsection (4), the Court may, as it considers fit, refuse the application or—

- (a) in the case of a decision of the Registrar to reuse registration, make an order directing the Registrar to effect the Registration; or
- (b) in a case falling within section 57, make an order directing the steps to be taken to remedy the error or omission in question.

Cancellation
of clerical
errors, etc.

57.—(1) The Registrar shall restore a registration if it appears to the Registrar that, due to a clerical error made by the Registrar, the registration has been incorrectly cancelled or removed.

(2) A registration restored under subsection (1) shall be regarded as having continued in force throughout the period during which it was incorrectly cancelled or removed (as the case may be), as if it had not been so cancelled or removed.

(3) The Registrar may, with the consent of the secured creditor, correct any clerical error or omission made by the Registrar in a registration.

58.—(1) The Registrar shall provide, upon payment of the prescribed fee, the following information to any person upon the request of that person—

Provision of information by Registrar.

- (a) whether there is any registration notice that identifies a particular debtor, or describes a motor vehicle by serial number, and that has not terminated with respect to all secured creditors identified in the notice;
- (b) the registration number, and the date and time of registration, of the registration notice;
- (c) the name and address of each debtor and each secured creditor identified in the notice; and
- (d) all of the information contained in the notice.

(2) Subject to subsection (3), the Registrar may determine the form in which the information mentioned in subsection (1) is provided.

(3) If requested to do so, and upon payment of the prescribed fee the Registrar shall issue a certified search report, or such other report certified by the Registrar, as may be reasonably required.

(4) A certified report issued by the Registrar under subsection (3) shall be admissible in evidence in any court without further evidence of its authenticity.

(5) The Registrar may provide information about some or all registration notices to interested persons from time to time, on terms determined by the Registrar, which terms may include payment by such persons of a reasonable fee for the provision of the information.

(6) Nothing in this section precludes any right of inspection free of cost under section 48 (3).

PART VIII. *General*

Duty of
secured
creditor to
make certain
information
available.

59.—(1) The debtor, or any person with the written consent of the debtor, may in writing request that the secured creditor give, or make available, to any specified person, at an address specified by the person making the request, any of the following—

- (a) a copy of the security contract that creates or provides for a security interest held by the secured creditor in the personal 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 personal property indicating which items are secured property, unless the security interest is over all of the personal property of the debtor;
- (d) a written approval or correction of the amount of indebtedness and of the terms of payment of the indebtedness.

(2) Subsection (1) shall not apply if the information requested under that subsection is required to be, or has already been, made available under any other law to the person who made the request.

(3) A secured creditor who is required to comply with a request made under subsection (1) shall comply with the request within ten working days after receiving the request.

(4) The Court may, on application by a secured creditor, make an order exempting, in whole or in part, the secured creditor from complying with a request made under subsection (1), or extending 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.

(5) A secured creditor who is requested to provide information under subsection (1) or (8) may charge the person who made the request a fee to cover the reasonable costs of providing the information.

(6) The Court may, on application by any person who makes a request under subsection (1), make an order requiring the secured creditor to comply with the request if, without reasonable excuse, the secured creditor fails to comply with the request.

(7) Where a request is made under subsection (1) and the person to whom the request was made no longer has an interest in the obligation or the secured property, that person shall send or make available to the person who made the request the name and address of the immediate successor to the interest concerned and the latest successor to the interest, if known.

(8) Where a person to whom this subsection applies makes a written request to the secured creditor for the provision of any information mentioned in subsection (1), and the secured creditor does not provide the information in writing within ten working days after receiving the request—

- (a) the person may apply to the Court, with notice to the secured creditor, for an order requiring the secured creditor to supply the information;
- (b) and the Court may make such order as it thinks fit as to the provision of the information.

(9) Subsection (8) applies to a person who—

- (a) is judgment creditor of a debtor; or
- (b) has a security interest in personal property of the debtor.

60.—(1) This section shall not apply to—

- (a) notices or other documents served or given in any court proceedings; or
- (b) notices or other documents served or given in accordance with another procedure specified in the security contract for serving or giving the notice or document concerned.

(2) Any notice or other document required or authorised by this Act to be served or given to any person (hereinafter in this

Services of notices, etc.

section called the intended recipient) shall be in writing and is sufficiently served or given if the intended recipient is—

- (a) an individual, by leaving it with the individual or by sending it by registered mail addressed to—
 - (i) the individual at the individual's residence; or
 - (ii) where the individual is the sole proprietor of a business, the name of the individual at the address of the business;
- (b) a partnership—
 - (i) by leaving it with—
 - (A) one or more of the general partners; or
 - (B) a person who, at the time of the delivery, has control or management of the partnership business; or
 - (ii) by registered mail addressed to—
 - (A) the partnership;
 - (B) one or more of the general partners; or
 - (C) a person who, at the time of delivery, has control or management of the partnership;
- (c) a corporation—
 - (i) by leaving it with an officer or director of the corporation or with a person who is in charge of any office or place of business of the corporation;
 - (ii) by leaving it with or by sending it by registered mail addressed to the registered office or head office of the corporation;

(iii) where the corporation has its registered office or head office outside Jamaica, by leaving it with or sending it by registered mail addressed to the secretary appointed pursuant to section 172 of the Companies Act or, in the case of a corporation incorporated in a jurisdiction other than Jamaica, the equivalent officer appointed pursuant to the laws of that jurisdiction or, if there is no such officer, a director of the corporation;

(d) an association by—

- (i) leaving it with an officer of the association; or
- (ii) by sending it by registered mail addressed to an officer of the association at the address of the officer.

(3) For the purposes of subsection (2), where an intended recipient is deceased, notice to that person may be served on or given to that person's personal representatives.

(4) Notwithstanding subsections (2) and (3), a court may in any case make an order directing the manner in which any notice or other document is to be served or given, or dispensing with the service or giving of the notice or other document.

(5) The giving of a notice or other document mentioned in subsection (2) by registered mail occurs—

- (a) when the addressee actually receives the document; or
- (b) except in cases where the postal services are not functioning, on the expiration of ten days after the day of registration,

whichever is earlier.

(6) For the purposes of this Act, a notice or other document served or given by facsimile is, in the absence of proof to the contrary, to be regarded as having been served or given if the facsimile machine used to send it generated a record of the transmission of the notice or other document (as the case may be) to the facsimile machine used by the intended recipient, and the date of the record is deemed to be the date of receipt of the notice or other document.

(7) A notice or other document given by electronic mail or other similar means of communication is, in the absence of proof to the contrary, to be regarded as having been given under this section, if—

- (a) the computer system used to transmit the notice or other document (as the case may be)—
 - (i) receives an acknowledgement or receipt of the transmission, generated by the electronic mail address of the intended recipient; or
 - (ii) has not generated a record that the transmission has failed; or
- (b) the person who gives the notice or document proves that the notice or document was transmitted by computer system to the electronic mail address provided by the intended recipient.

Regulations.

61. The Minister may make regulations for the purpose of giving effect to the provisions of this Act and, without limiting the generality of the foregoing, such regulations may—

- (a) make provision as to the staff and maintenance of the Security Interests Registry and the operation of the Register including the period for which records of entries are to be retained;
- (b) prescribe the form of registration notices, amendment notices, continuation notices and termination notices, and of all other notices or forms required under this Act to be filed in, or issued by, the Registry;
- (c) prescribe the matters in respect of which fees are payable under this Act, the amount of those fees, and the modes of payment thereof;
- (d) prescribe the data required to be submitted as to—
 - (i) the description of secured property;
 - (ii) the manner of submission for registration of registration notices, amendment notices and termination notices;

- (e) prescribe the form of search results and the method of their disclosure;
- (f) the form of any notice required to be given to any person under this Act;
- (g) subject to affirmative resolution, specifying the kinds of goods the leases of which are not within the scope of this Act;
- (h) subject to affirmative resolution, make provisions for the protection of consumers in respect of any specified category of personal property capable of being subject to a security interest.

62.—(1) Except as otherwise provided by this section, the validity, perfection and effect of perfection or non-perfection of a security interest is governed by the laws of Jamaica if—

Conflict of laws.

- (a) at the time the security interest attaches, the secured property concerned is situated in Jamaica;
- (b) at the time the security interest attaches, the secured property concerned is situated outside Jamaica, but the security contract contemplates that the secured property will be moved to Jamaica;
- (c) the security contract provides that the laws of Jamaica shall apply; or
- (d) in any other case, the laws of Jamaica apply.

(2) In respect of goods brought into Jamaica, a security interest perfected under the law of the jurisdiction in which the goods are situated at the time the security interest attaches but before the goods are brought into Jamaica retains its priority ranking in relation to other security interests in the goods, wherever perfected, if the security interest is perfected in Jamaica in accordance with section 8—

- (a) within thirty days after the goods are brought into Jamaica;
- (b) within fifteen days after the secured creditor has knowledge that the goods have been brought into Jamaica; or

- (c) before the date on which registration ceases under the law of the jurisdiction in which the goods are situated at the time the security interest attaches,

whichever is the earliest, but the security interest shall not have priority over the interest of a buyer in the ordinary course of business who acquires the goods without knowledge of the security interest.

(3) Nothing in subsection (2) shall be construed as preventing the perfection of a security interest after the expiration of any time period specified in that subsection.

(4) Where a security contract creating a security interest in goods provides for the goods to be kept in another jurisdiction and, within thirty days after the security interest attaches, the goods are removed to that other jurisdiction for purposes other than transportation through the other jurisdiction, the validity, perfection and effect of perfection or non-perfection of the security interest shall be governed by the law of the other jurisdiction.

Act binds the
Crown.

63. This Act binds the Crown.

Review of
Act.

64. This Act shall be reviewed by a committee of both Houses of Parliament no later than three years from the appointed day.

Transitional.

65.—(1) Subject to the provisions of this section, priority between interests in personal property created before the appointed day shall be determined by the laws applicable immediately prior to the appointed day.

(2) A security interest perfected under this Act shall have priority over an interest in personal property created before the appointed day, except as provided by subsection (3).

(3) A creditor who immediately before the appointed day has an interest in the personal property of a debtor (including personal property for which title is retained by the creditor and to which the debtor has been given a right of possession) may register a registration notice of its interest at any time, and—

- (a) if the notice is filed before the expiration of the transitional period, the interest shall—
- (i) have priority over a security interest created, registered or perfected under this Act;

- (ii) retain its priority in relation to other interests in personal property created before the appointed day and in respect of which a notice in accordance with this subsection is filed before the expiration of the transitional period; and
 - (iii) have priority over an interest in personal property created before the appointed day and in respect of which a registration notice has not been filed before the expiration of the transitional period; and
- (b) if the notice is filed after the expiration of the transitional period, the interest shall have priority over a security interest created, registered or perfected after the time of the filing.
- (4) Notwithstanding the provisions of section 49 (1)(a) a registration notice of a security contract made before the appointed day shall not be required to state the taxpayer registration number of the debtor concerned.

(5) In this section—

“creditor” includes an execution creditor;

“the transitional period” means the period of three hundred and sixty-five days beginning on the appointed day (herein called “the initial period”), or such longer period as the Minister may before the expiration of the initial period, prescribe by order subject to affirmative resolution.

66.—(1) The following Acts are hereby repealed—

- (a) the Agricultural Loans Act;
- (b) the Bills of Sale Act;
- (c) the Debenture Registration Act.

(2) The provisions of the Acts specified in Column 1 of the Schedule are amended in the manner set out with respect thereto in Column 2 of the Schedule.

Repeals and consequential amendments. Schedule.

Savings.

67.—(1) Nothing in this Act shall be construed as subjecting any written security contract or other instrument to a higher rate of stamp duty than which applied to such contracts or other instruments before the appointed day.

(2) The following provisions of the Stamp Duty Act shall not apply to any security interest to which this Act applies—

- (a) section 32A(2)(b); and
- (b) the following provision set out in the Schedule under the heading “MORTGAGE”: “And if the total amount of the money secured, or to be ultimately recoverable thereon, shall be uncertain, and without any limit, then the same shall be available as a security or charge for such amount only of money or stock intended to be thereby secured as the *ad valorem* duty denoted by any stamp or stamps thereon will extend to cover.

SCHEDULE (Section 66)

Consequential Amendments

<u>Column 1</u>	<u>Column 2</u>
<u>Provision</u>	<u>Amendment</u>
1. The Agricultural Credit Board Act	<p>1.—(1) In section 26, delete paragraph (b) and substitute therefor the following—</p> <p>“(b) by a security interest created in accordance with the Security Interests in Personal Property Act;”.</p> <p>(2) In section 27—</p> <p>(a) in subsection (1), delete the words “charge on” and substitute therefor the words “security interest in”;</p> <p>(b) in subsection (2), delete the word “charge” wherever it appears and substitute therefor in each case the words “security interest”;</p> <p>(c) delete subsection (3) and substitute therefor the following—</p> <p>“(3) In this section, “security interest” means a security, interest within the meaning of the Security Interests in Personal Property Act.”.</p> <p>(3) In section 28—</p> <p>(a) delete the words—</p> <p>(i) “a charge created under section 27 or”;</p> <p>(ii) “charge or”, wherever they appear;</p> <p>(b) delete subsection (3).</p>

Column 1

Column 2

Provision

Amendment

(4) Sections 29 to 32 are hereby repealed.

(5) In section 33, delete the words —

(a) “charge created under section 27 or by”;

(b) “charge or”,

wherever they appear.

2. The Companies Act

2.—(1) In section 2, insert next after the definition of “rules” the following definition—

“security interest” has the meaning assigned to it under the Security Interests in Personal Property Act;”.

(2) In section 93—

(a) delete subsection (3) and substitute therefor the following—

“ (3) This section applies to a charge on land (wherever situated) or any interest therein, but not to a charge for any rent or other periodical sum issuing out of land.”;

(b) delete subsections (6), (7) and (8).

(3) Section 94 is hereby repealed.

(4) In section 95—

(a) in subsection (1), delete the words “of the issues of debentures of a

Column 1

Column 2

Provision

Amendment

series requiring registration under section 93” and substitute therefor the words “to which section 93 applies”;

- (b) in subsection (3), delete the words “or of the issues of debentures of a series requiring registration as aforesaid.”.

(5) In section 97, delete subsection (1) and substitute therefor the following—

“ (1) The Registrar shall keep, with respect to each company a register, in the prescribed form, of all the charges to which section 93 applies and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars—

- (a) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property;
- (b) the amount secured by the charge;
- (c) short particulars of the property charged; and
- (d) the persons entitled to the charge.”.

Column 1ProvisionColumn 2Amendment

(6) Delete section 98.

(7) In section 99—

(a) delete the words “or undertaking” wherever they appear;

(b) delete the words “, as the case may be,”.

(8) In section 102(1)—

(a) delete the semi-colon appearing after the words “the company” and substitute therefor a full-stop;

(b) delete the proviso.

(9) In section 123(2), delete the words “charges which are required to be registered under this Act” and substitute therefor the words “which are required to be registered under this Act and all security interests registered under the Security Interests in Personal Property Act”.

(10) In section 311 (4) (b), delete the words “debentures” and substitute therefor the words “security interests under the Security Interests in Personal Property Act and arising”.

(11) In section 313—

(a) in subsection (1), insert next after the word “charged” the words “(including a security interest in personal property)”;

(b) in subsection (2), insert next after the word “charge” the words “(including a security interest in personal property)”.

Column 1

Column 2

Provision

Amendment

(12) In section 320 (b), insert next after the words "charge on" the words "(including a security interest in personal property)".

(13) In section 342, delete the words "the debenture holders or other".

(14) In section 345(1), delete the words "debentures of the company secured by a floating charge" and substitute therefor the words "security interest registered under the Security Interests in Personal Property Act".

3. The Farm Loans Act

3.—(1) Delete section 7 and substitute therefor the following—

"Guaranteed farm loan. 7. A farm loan shall not be a guaranteed farm loan unless it is granted upon—

(a) the security of a charge land in which an estate in fee simple is owned by the borrower; or

(b) the creation of a security interest in personal property in accordance

Column 1

Column 2

ProvisionAmendment

with the
Security
Interests in
Personal
Property
Act.”.

(2) In section 8—

- (a) in subsection (1), delete the words “subsection (2) of section 7” and substitute therefor the words “section 7(a)”;
- (b) in subsection (3), delete the words “or crops growing on land.”;
- (c) in subsection (5), delete the words “property, real or personal” and substitute therefor the words “real property”.

(3) In section 9—

- (a) in subsection (1), delete the words “property or crops” and substitute therefor the words “real property”;
- (b) in subsection (2), delete the words “property or crop” and substitute therefor the words “real property”.

(4) Section 10 is hereby repealed.

(5) In section 11, delete the words “subsection (1)”.

(6) In section 16(1), insert next after the figure “7” the figure “(a)”.

<u>Column 1</u>	<u>Column 2</u>
<u>Provision</u>	<u>Amendment</u>
4. Hire Purchase Act	4.—(1) Part III of the Act is hereby repealed. (2) In section 35, delete the words “as defined under section 2 of the Bills of Sale Act”. (3) Delete section 36.
5. Trade Marks Act and Trade Marks Rules, 2001	1. In section 30 of the Act— (a) in subsection (1), delete paragraph (c); (b) in subsection (6)— (i) delete the semi-colon at the end of paragraph (b) and substitute a full stop therefor; (ii) delete paragraph (c). 2. In the Rules— (a) in rule 15(4), delete the words “, or security interest”; (b) in rule 16(5) delete from paragraph (a) the words “or a security interest”; (c) delete paragraph (c) of rule 29; (d) in rule 30(1), delete sub-paragraph (d); (e) in the First Schedule delete the entry relating to item 21 (request for registration of a grant, amendment or removal of a security interest) and renumber the remaining provisions consequentially.
6. The Workmen’s Compensation Act	6.—(1) In section 21(1), delete the words “debentures secured by a floating charge, of any property comprised in or subject to the charge” and substitute therefor the words “a security interest registered under the Security

Column 1
_____Provision
_____Column 2
_____Amendment

Interests in Personal Property Act, of any property comprised in or subject to the security interest”.

(2) In subsection (3) (ii) of section 21, delete the words “any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge” and substitute therefor the words “a registered security interest arising under a floating charge, or possession is taken of any property subject to the security interest by or on behalf of such holders”.

Passed in the House of Representatives this 3rd day of December 2013 with eighty-four (84) amendments.

MICHAEL A. PEART
Speaker.

Passed in the Senate this 12th day of December 2013 with twenty-one (21) amendments.

FLOYD E. MORRIS
President.

On the 17th day of December, 2013 the House of Representatives agreed to the amendments made by the Senate.

MICHAEL A. PEART
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.



THE
JAMAICA GAZETTE
SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

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TUESDAY, DECEMBER 24, 2013

No. 139A

No. 272A

THE SECURITY INTERESTS IN PERSONAL PROPERTY ACT
(Act 38 of 2013)

THE SECURITY INTERESTS IN PERSONAL PROPERTY ACT, 2013
(APPOINTED DAY) NOTICE

In exercise of the power conferred on the Minister by section 1 of the Security Interests in Personal Property Act, 2013, the following Notice is hereby given:—

1. This Notice may be cited as the Security Interests in Personal Property Act, 2013 (Appointed Day) Notice.
2. The 2nd day of January, 2014, is hereby appointed as the day on which the Security Interests in Personal Property Act, 2013, shall come into operation.

Dated this 24th day of December, 2013.

G. ANTHONY HYLTON
Minister of Industry, Investment and Commerce.