

# REPRINT

## **BILLS OF SALE ACT (CAP. 174)**

**As in force at: 1 March 1996**

**STATUS: HISTORICAL & REPEALED**

This version is that published in the Revised Edition of the Laws in force in Solomon Islands on 1st March 1996 [LN 24/96]. It does not include amendments made since that date.

Repealed by the Secured Transactions Act 2008 (No. 4 of 2008) from 31 August 2009

### **AN ACT TO PROVIDE FOR THE REGISTRATION OF BILLS OF SALE**

## **BILLS OF SALE ACT (CAP. 174)**

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# **BILLS OF SALE ACT (Cap. 174)**

**As in force at: 1 March 1996**

## **1 Short title**

This Act may be cited as the *Bills of Sale Act*.

## **2 Definition of Bill of Sale**

In this Act the term "**Bill of Sale**" includes:

- (i) any bill of sale, assignment, transfer, declaration of trust without transfer, inventory of goods with receipt thereto attached, receipt for purchase-money of goods, and other assurance of personal chattels;
- (ii) any power of attorney, and authority or licence to take possession of personal chattels as security for any debt;
- (iii) any agreement (including debentures of a joint stock company) whether intended or not to be followed by the execution of any other instrument by which a right in equity to any personal chattels or to any charge or security thereon shall be conferred;
- (iv) any attornment, instrument or agreement whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance or otherwise for the purpose of security only; but this is not to extend to a mortgage of real estate which a mortgagee in possession has leased to the mortgagor at a fair and reasonable rent;
- (v) a trader's bill of sale.

## **3 Interpretation**

In this Act unless the context otherwise requires:

**“chattels personal”** includes machinery used in or attached to any factory or workshop exclusive of fixed motive powers such as water-wheels, steam-engines, steam-boilers, donkey-engines and fixed appurtenances of the said motive powers, and exclusive of fixed power machinery such as shafts, wheels or drums and their fixed appurtenances, which transmit the action of the motive powers, and exclusive of pipes for steam, gas and water in the factory or workshop;

**“trader”** means a person engaged or about to engage in the business of selling by retail any goods, wares or merchandise;

**“trade goods”** means plant, fixtures, fittings, goods, wares or merchandise which at the time of the execution of a trader’s bill of sale are owned and used or intended to be used, or which are to be thereafter acquired and, when so acquired, will be owned and used or intended to be used, by the trader in or in connection with the business in which he is engaged or about to engage;

**“trader’s bill of sale”** means a bill of sale executed by way of security by a trader the personal chattels comprised in or made subject to which are trade goods.

#### 4 **Bill of Sale to have schedule of property**

Every Bill of Sale given as security for money shall have annexed to it, or written on it, a schedule containing an inventory of the personal chattels specifically described in the said schedule, and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described:

Provided that nothing contained in this section shall apply to a trader’s bill of sale.

#### 5 **Description of property in trader’s bill of sale**

Every trader’s bill of sale shall be void unless the same sets forth a description of the trade goods comprised in or made subject thereto. A description shall be sufficient for the purposes of this section if it is a particular description of specified trade goods mentioned or enumerated in the trader’s bill of sale or a general description of the trade goods comprised in or made subject to the trader’s bill of sale

(whether such trade goods are owned and used or intended to be used by the grantor at the time of the execution of the trader's bill of sale in or in connection with the business in which he is engaged or about to engage or are trade goods to be acquired after the date of the execution of the trader's bill of sale over which, in equity, any charge or security is conferred by the trader's bill of sale) by reference to the nature, type, quality, purpose or mode of user or other distinguishing features sufficient to render such trade goods reasonably capable of identification, or partly such a particular description and partly such a general description.

## **6 Bill of Sale must be registered**

- (1) Every Bill of Sale shall be executed in the presence of and attested by at least one witness, and shall be registered in the manner hereinafter provided, and shall truly set forth the consideration for which it was granted.
- (2) Every Bill of Sale shall, so far as regards any personal chattels to be affected thereby, be void unless and until it be registered under this Act.

## **7 Seizure of chattels**

Personal chattels assigned under a Bill of Sale as security for the payment of money shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:

- (a) if the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment or in the performance of any covenant or agreement contained in the Bill of Sale and necessary for maintaining the security;
- (b) if the grantor shall become bankrupt or suffer the said goods or any of them to be distrained for rents, rates, or taxes;
- (c) if the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises;
- (d) if the grantor shall, without reasonable excuse, refuse upon demand in writing by the grantee to produce his last receipts

for rent, rates and taxes;

- (e) if execution shall have been levied against the goods of the grantor under any judgment:

Provided that the grantor may apply to the Court and the Court, if satisfied that the said cause of seizure no longer exists, may restrain the grantee (if a person subject to the jurisdiction of the Court) from removing or selling the said chattels, or may make such other order as may seem just.

## **8 Mode of effecting registration**

- (1) Registration shall be effected either by presenting to the person appointed pursuant to the Constitution to be the Registrar for the purposes of this Act (such person being hereinafter referred to as the Registrar) the Bill of Sale together with a true copy thereof, or by presenting the Bill of Sale executed in duplicate to the said Registrar who shall file the Bill of Sale, or one of the duplicates when the Bill of Sale is executed in duplicate, in such a manner as to constitute part of an appropriate book, each Bill of Sale, or duplicate as the case may be, so filed being deemed to constitute a page of the book wherein it is filed, and the true copy of the Bill of Sale, or the other of the duplicates when the Bill of Sale is executed in duplicate, shall be delivered with the particulars of registration duly endorsed thereon by the Registrar to the grantee who shall pay the expenses of registration.
- (2) Subject as hereinafter provided no Bill of Sale executed after the commencement of this Act shall be registered unless it has been proved on oath by the grantor or one of the grantors, or by the grantee or one of the grantees, or by one of the subscribing witnesses to have been duly executed by the grantor. The oath shall be in the Form A or B in the First Schedule hereto or to the like effect.
- (3) The proof required by this section shall be made as follows:
  - (a) if such Bill of Sale be executed in Solomon Islands: before the Registrar, or before a member of the Court, or an officer thereof having authority to administer an oath;
  - (b) if such Bill of Sale be executed in any part of Her Majesty's

Dominions or in any Protectorate: before any Judge of any Court of Law, any Magistrate, Commissioner of Oaths or Notary Public therein, or the person administering the Government thereof;

- (c) if such Bill of Sale be executed in any foreign country not being a Protectorate of Her Majesty: before any British Consul or other accredited British Representative resident in such country.
- (4) A Bill of Sale not proved before the Registrar shall not be registered unless it shall have upon it a certificate as near as may be in the Form C in the First Schedule hereto purporting to be under the hand and seal or private seal (if there should be no official seal), or the hand alone if the person shall have no official or private seal, of some one of the persons hereinbefore authorised to receive such proof, to the effect that such Bill of Sale has been proved.
- (5) The proof hereinbefore provided for shall not be required:
  - (a) in the case of a Bill of Sale executed in Solomon Islands to which the Crown is a party as grantor or to the execution of which by the grantor or grantors the Minister, the Registrar, a member or a barrister or solicitor of the Court, the Surveyor General, or a Registered Land Surveyor is a subscribing witness stating his official description; or
  - (b) in the case of a Bill of Sale executed out of Solomon Islands to the execution of which by the grantor or grantors some one of the persons hereinbefore authorised to receive the proof thereof is a subscribing witness stating his official description.

## 9

### **Defeasance or declaration of trust to be registered**

If the Bill of Sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith, and as part thereof, otherwise the registration shall be void.

**10 Transfer need not be registered**

The transfer or assignment of a registered Bill of Sale need not be registered.

**11 Presentation Book**

The Registrar shall enter in the Presentation Book a short description of every Bill of Sale being in order to be registered which is presented for registration with the year, month, day, hour and minute of such presentation, and such year, month, day, hour and minute shall be taken to be the time of registration.

**12 Certificate of registration**

The Registrar shall as soon as practicable after the entry in the Presentation Book of any Bill of Sale place upon such instrument a certificate of registration in the Form D in the First Schedule hereto.

**13 Limit of time for registration**

Registration of Bills of Sale shall be effected within the following periods:

- (a) in the case of a Bill of Sale executed at any place situate within fifteen miles of the office, the period of three weeks from its date;
- (b) in the case of a Bill of Sale executed elsewhere in Solomon Islands, the period of three months from its date;
- (c) in the case of a Bill of Sale executed in any State or Territory of the Commonwealth of Australia, the period of six months from its date;
- (d) in the case of a Bill of Sale executed elsewhere out of Solomon Islands, the period of twelve months from its date:

Provided that the Court may order registration at any time of a Bill of Sale on proof by affidavit that it has been presented for registration by the first available opportunity.

**14      Searches**

The Registrar shall allow searches to be made at all reasonable times in any register book or file, and upon request and payment of the appointed fees shall give copies or extracts of or from any entry in such book or register and shall certify as correct all such copies or extracts. Every copy or extract or certificate of registry purporting to be signed by a Registrar shall be received in evidence without any further or other proof thereof, unless it shall be proved that the same is a forgery, in all legal proceedings of a civil nature instead of the production of the original register of record.

**15      Avoidance of certain duplicate Bills of Sale**

Where a subsequent Bill of Sale is executed within or on the expiration of the time prescribed after execution for the registration of a prior unregistered Bill of Sale, and comprises all or any part of the personal chattels comprised in such prior Bill of Sale, then, if such subsequent Bill of Sale is given as a security for the same debt as is secured by the prior Bill of Sale, or for any part of such debt, it shall, to the extent for which it is a security for the same debt, or part thereof, comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the Court that the subsequent Bill of Sale was *bona fide* given for the purpose of correcting some material error in the prior Bill of Sale, and not for the purposes of evading this Act.

**16      Rectification of register**

The Court on being satisfied that the omission to register a Bill of Sale within the time prescribed by this Act or the omission or misstatement of the name, residence, or occupation of any person was accidental or due to inadvertence may in its discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as the Court thinks fit to direct.

**17      Renewal of registration**

- (1) The registration of a Bill of Sale must be renewed or further renewed as the case may be at least once every five years and, if a period of

five years elapse without such renewal or further renewal, the registration shall become void.

- (2) The renewal of a registration shall be effected by filing with the Registrar an affidavit in the form set forth in the Third Schedule hereto and shall state the date of the Bill of Sale and of the last registration thereof and the names, residences and occupations of the parties thereto, as stated therein, and that the Bill of Sale is still a subsisting security, and the Registrar shall make an entry of the fact of the renewal in the Presentation Book and on the Bill of Sale filed in his office.
- (3) A renewal of registration shall not become necessary by reason only of a transfer or assignment of a Bill of Sale.

## **18 Satisfaction to be entered in register**

The Court may order a memorandum of satisfaction to be written upon any registered copy of a Bill of Sale, upon proof being given that the debt (if any) for which the Bill of Sale was made or given has been satisfied or discharged.

## **19 Fees**

- (1) In respect of any matter or thing mentioned in the Second Schedule hereto the fee therein specified shall be paid therefor.
- (2) The Minister may for any reason which he may deem expedient reduce the amount of any fee payable under this Act or remit the same altogether, or, if such fee shall have been paid into the Treasury, he may order its refund.
- (3) Every sum received under or by virtue of this Act shall be paid into the Consolidated Fund by the person receiving the same.
- (4) The Minister may from time to time make rules altering, revoking or adding to the fees specified in the Second Schedule hereto.

## **20 Order of disposition**

Chattels comprised in a Bill of Sale which has been duly registered under this Act, not being security for the payment of money, shall not

be deemed to be in the possession, order or disposition of the grantor of the Bill of Sale within the meaning of the *Bankruptcy Act*. Chattels comprised in a Bill of Sale which has been duly registered under this Act, and being security for the payment of money, shall be deemed to be in the possession, order or disposition of the grantor of the Bill of Sale within the meaning of the *Bankruptcy Act*, but subject to the claim of the grantee.

**21 Bill of Sale no protection against claim for taxes**

A Bill of Sale to which this Act applies, shall be no protection in respect of personal chattels included in such Bill of Sale which, but for such Bill of Sale, would have been liable to be seized in execution under a judgment of the Court for any rates or taxes due to the Government of Solomon Islands and the liability of such chattels to any such seizure in execution shall be deemed to have arisen on the day when any such taxes became due, unless more than three months shall elapse between the day when such taxes became due and the day on which judgment was given, when the liability of such chattels to seizure in execution shall be deemed to have arisen three months before judgment was given.

**22 Assignments accompanied by delivery need not be registered**

Nothing in this Act shall affect an assignment of personal chattels accompanied by a transfer of the possession of such chattels.

## FIRST SCHEDULE

(Sections 8 and 12)

### FORM A

#### OATH FOR PROOF OF A BILL OF SALE

I, A.B., of make oath and say that  
on the day of , 19 , I duly  
executed the instrument now produced to me and marked A, and that  
I can read and write (or cannot read and write, and that the said  
instrument was read over and interpreted to me by at the  
time of its execution and that I understand its provisions).

Sworn at this day of , 19  
A.B.

Before me, C.D. [state official description]

### FORM B

I, C.D., of make oath and say that  
on the day of , 19 , I saw A.B.,  
of , duly execute the instrument now produced to me and  
marked A, and that the said A.B. can or could read and write (or  
cannot or could not read and write and that the said instrument was  
read over and interpreted to him by at the time of its  
execution, and that he appeared to understand its provisions).

Sworn at this day of , 19  
C. D.

Before me, E.F. [state official description]

### FORM C

## CERTIFICATE OF PROOF OF BILL OF SALE NOT BEFORE THE REGISTRAR

This instrument was proved before me by the oath of the within  
named  
to have been duly executed by the  
within named  
on the      day of      , 19

Given under my hand, and official seal.

A.B. [state official description]

*or*

Given under my and and private seal, I having no official seal.

A.B [state official description.]

*or*

Given under my hand, I having no official or private seal.

A.B. [state official description.]

## FORM D

### CERTIFICATE OF REGISTRATION

*Solomon Islands*

Registered in the Office of the Registrar the      day of      ,  
19      at      o'clock noon in Register of      Book  
No.      Folio No.      .

A.B.

Registrar.

## SECOND SCHEDULE

(Section 19)

	\$
For registering a Bill of Sale	10–00
For every search	5–00
For a certified copy of extract of a Bill of Sale per page	1–00
For every entry of satisfaction	5–00
For renewal	5–00

## THIRD SCHEDULE

(Section 17)

I, A.B., of \_\_\_\_\_ do swear that a Bill of Sale bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ [insert the date of the Bill] and made between [insert the names and description of the parties as in the original Bill of Sale] and which said Bill of Sale was registered on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ [insert date of registration] is still a subsisting security.

Sworn, etc.

*Registrar or other competent*

*Authority.*

## ENDNOTES

### 1 KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
It = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

### NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 174 of the Revised Edition of the Laws of Solomon Islands.

### 2 LIST OF LEGISLATION

#### *Bills of Sale Act (Cap. 174)*

Constituent legislation:	6 of 1897 (Commenced 1 August 1897)
	11 of 1922
	11 of 1926
	3 of 1932
	14 of 1956
	13 of 1959
	8 of 1965
	11 of 1970
	LN 46A of 1978
	LN 64 of 1987

### 3 LIST OF AMENDMENTS