

REPRINT

SECURED TRANSACTIONS ACT 2008

As in force at: 31 August 2009

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AN ACT TO REPEAL THE BILL OF SALES ACT AND TO PROVIDE FOR THE REGULATION, CREATION AND REGISTRATION OF TRANSACTIONS PERTAINING TO INTEREST IN MOVABLE PROPERTY AND FOR RELATED MATTERS.

SECURED TRANSACTIONS ACT 2008

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PART I PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the *Secured Transactions Act 2008* and shall, subject to subsection (2) come into force on a date appointed by the Minister by notice in the *Gazette*.
- (2) This Act shall not be brought into force before the Filing Office is operational and capable of performing its function under this Act.

2 Interpretation

In this Act, unless the context otherwise requires:

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

“account” means an unsecured right to payment for goods sold or otherwise disposed of, or for services rendered;

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

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

“collateral” means present or future movable property subject to a security interest or lien;

“commingled goods” has the meaning given to it in section 27(1);

“consumer goods” means goods used primarily for personal, family or household purposes, but does not include licensed motor vehicles;

“debtor” means a person who owes payment or other performance

of a secured obligation, whether or not the person owns or has rights in the collateral, and includes a seller of accounts or secured sales contract, and a lessee of goods;

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

“deposit account” means a demand, term deposit savings, passbook or similar account maintained with a bank, but does not include investment property or accounts evidenced by an instrument;

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

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

“Filing Office” means the Filing Office established under section 29 ;

“fixture” means goods that are fixed or are intended to become fixed to immovable property in a manner that causes a property right to arise in the goods, but does not include building materials and readily removable factory machines, office machines and domestic appliances;

“goods” means all things that are movable when a security interest attaches, and includes fixtures, crops and livestock, but does not include accounts or secured sales contracts, money, documents or other instruments;

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

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

“investment security” means equity or debt securities in a publicly traded company, whether or not equity or debt securities are

evidenced by certificates;

“lien holder” means a person who obtains a right in collateral by order of a court or other legal authority or by the authority of an administrator in an insolvency proceeding, or any other person who obtains a right in collateral by operation of law, except a person with a right of retention;

“movable property” means movable thing of any nature, intangible of any nature and any fixtures;

“notice” means a record filed in the Filing Office and includes an initial notice, amended notice termination notice, and notice of objection;

“ordinary course of business” means a transfer of movable property by a person who deals in the kind of property transferred;

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

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

“proceeds” means whatever is acquired upon sale, lease or other disposition of collateral, or whatever is collected on or distributed with respect to collateral, and includes money, property exchanged for the original collateral, property purchased with money proceeds, a deposit account into which money proceeds are deposited, and a right to insurance payment or other compensation for loss or damage of collateral;

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

“record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

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

“secured party” means a person in whose favour a security interest is created under a security agreement, and, for the purposes of priority determination and filing only, includes a buyer of accounts or secured sales contracts and a lessor of goods for more than a year;

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

“security interest” means a property right in collateral that secures performance of an obligation; and includes for the purpose of perfection and priority, the interests of a buyer of accounts or secured sales contracts and a lessor of goods for more than one year;

“serial number equipment” means any major end item of industrial, construction or agricultural equipment that is identified by unique serial numbers.

3 **Application**

(1) This Act applies:

- (a) to transactions that secure an obligation with collateral, regardless of the form of agreement or the terminology used, and whether the collateral is owned by the secured party or the debtor; and
- (b) to the sale of accounts and secured sales contracts and to the lease goods for more than one year, but only for the purposes of priority determination and filing of a notice;
- (c) to transactions relating to boats not regulated under the *Shipping Act* or flying objects not regulated under the *Civil Aviation Act*.

(2) This Act does not apply:

- (a) to the sale of a business;

- (b) to assignment solely for the collection of debt;
 - (c) to the transfer of a claim for the present or future wages or other compensation of an employee;
 - (d) to the mortgage of a vessel that is required under the *Shipping Act*; or
 - (e) to transactions relating to aircraft regulated under the *Civil Aviation Act*.
- (3) If there is a conflict between a provision of this Act and a provision of any other written law, the provision of this Act shall prevail unless the provision of that other Act specifically amends or repeals a provision of this Act.

4 Objects of this Act

For the purposes of facilitating access to credit in the market, the objects of this Act are:

- (a) to establish the priority of various security interests in collateral as against all other persons with competing claims in such collateral; and
- (b) to ensure that public records held by the Filing Office provide notifications to all other persons of the existence of the security interests in such collateral.

PART II SECURITY INTEREST, OBLIGATIONS AND PRIORITY

5 Obligations

A security interest may secure one or more obligations which may:

- (a) be described specifically or generally;
- (b) be monetary or non-monetary;
- (c) be pre-existing, present or future; or
- (d) be in respect of a current account.

6 Security interest in consumer goods

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

7 Description of collateral

- (1) A description of collateral is sufficient, whether it is specific or general, if it reasonably identifies what is described, such as “all equipment” or “all movable property” except that consumer goods require a specific description.

8 Attachment of interest

- (1) A security interest attaches to collateral and becomes enforceable only if:
 - (a) each debtor has signed a security agreement that describes the collateral;
 - (b) value has been given by the secured party; and
 - (c) the debtor has rights in the collateral
- (2) A security interest attaches to proceeds unless otherwise agreed.

9 Notice to account debtors not required

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

10 Continuity of security interest

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

11 Security agreement in a record

- (1) A security agreement must be in a record or multiple records, which

may be electronic.

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

12 Perfection of security interest

- (1) A security interest is perfected when it has attached to the collateral and a means of perfection is completed, subject to the conditions specified in section 20.
- (2) The means of perfection are:
 - (a) the filing of a notice;
 - (b) the possession of the collateral;
 - (c) the control of the collateral; and
 - (d) the automatic perfection as provided in subsections 20(1) and (5).

13 Means of perfection in special cases

A notice must be filed in the Filing Office to perfect a security interest with the following qualifications:

- (a) perfection occurs automatically upon attachment of the security interest in case of a purchased money security interest in consumer goods of the debtor;
- (b) a security interest in goods, instruments, documents or secured sales contracts may be perfected by secured party's taking possession;
- (d) a security interest in a deposit account may be perfected only by the secured party's control of the deposit account;
- (e) upon disposition of collateral, a security interest attaches to proceeds of the collateral and is continuously perfected if the security interest in the collateral was perfected. The security interest in proceeds becomes unperfected 15 days after the debtor receives the proceeds unless the proceeds are

identifiable cash proceeds or are described by the collateral description in the filed notice;

- (f) a lessor or a buyer of accounts or secured sales contracts may perfect its interest in the same manner as for a security interest; and
- (g) a security in a motor vehicle or serial numbered equipment may be perfected by filing a notice that describes the motor vehicle or the serial numbered equipment generally or by serial number. As against a buyer or lessee, however, priority requires description by serial number.

14 Perfection by different means

A security interest is perfected continuously if it is first perfected in one manner and later perfected in another manner, without a period when it is not perfected.

15 Assignment of security interest

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

16 Lapse of perfection

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

17 Priority rules

- (1) Security interests and interests of lien holders in the same collateral have priority according to time of filing of notice or perfection by other means, except as otherwise provided in this Act.
- (2) Priority is measured from the earlier to occur of filing of a notice or perfection by other means, provided that there is no time thereafter when a notice is not effective or perfection does not exist.
- (3) The first security interest to attach to a collateral has priority among

security interests for which there is no effective filed notice or other form of perfection.

18 Priority continues in proceeds

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

19 Purchase of secured sales contract or instruments

A purchaser of secured sales contracts or instruments has priority over a secured party's security interest in the secured interest in the secured sales contracts or instruments if in the ordinary course of the purchaser's business:

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

20 Transferee Exception

- (1) A transferee takes collateral free of a security interest if the transferee gives value and takes delivery of the collateral without knowledge of the security interest and before a notice is filed or security interest is otherwise perfected.
- (2) A buyer or lessee of goods in the ordinary course of business takes free of a security interest, even if the security interest is perfected and the buyer or lessee knows of its existence.
- (3) A buyer or a lessee of a motor vehicle or serial numbered equipment takes it free of a security interest, if the buyer or lessee does not know of the security interest and if the serial number is not included on a filed notice of security interest.
- (4) A buyer takes free of a perfected security interest in goods if the secured party consents to the sale by the debtor.
- (5) A person who receives cash for value takes free of a perfected security interest in the cash.

- (6) A lien holder who takes control of collateral or causes collateral to be seized before a security interest is perfected takes free of the security interest.
- (7) A court or a liquidator of an insolvent company that takes physical custody or control of assets before a security interest is perfected in such assets takes free of the security interest.

21 Purchase money security interest

- (1) A purchased money security interest in equipment has priority over a conflicting security interest if the purchase money security interest is perfected when the debtor receives possession of the equipment or within 10 days thereafter.
- (2) A purchase money interest in goods or their proceeds that is perfected not later than 10 days from the date the debtor obtains possession of the goods has priority over the rights of a buyer, lessee or lien holder which arise between the time the security interest attaches and the time the notice is filed.
- (3) A perfected purchased money security interest in inventory or livestock has priority over a conflicting perfected security interest in the same inventory or livestock if:
 - (a) the purchase money security is perfected when the debtor receives possession of the inventory or livestock; and
 - (b) not later than 10 days after the debtor receives possession, the purchase money secured party gives written notice to the holder of the conflicting perfected security interest in the same types of inventory or livestock.

22 Livestock

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

23 Fixtures

- (1) A security interest may continue in goods that become fixtures.
- (2) A security interest in fixtures is subordinate to rights in the immovable property to which it is affixed.
- (3) Subsection (2) does not apply:
 - (a) if a notice of the security interest in the fixtures has been filed in the Filing Office;
 - (b) if the right in the immovable priority arose after the goods became fixed, the filing of the notice of the security interest in the fixtures preceded registration of the rights in or seizure of the immovable property.

24 Crops

- (1) A perfected security interest in crops growing or to be grown has priority over a conflicting interest of the owner or mortgagee of the land if the debtor is in possession of the land or has an interest in the land that is registered in accordance with the *Land and Titles Act*.
- (2) A perfected security interest in crops or their proceeds, given for value to enable the debtor to produce or harvest the crops and given while the crops are growing or during the 6 month period before the crops were planted has priority over any other security interest in the same collateral given by the same debtor.
- (3) An unperfected security interest in crops is subordinate to the rights of a judgment creditor who causes the land to be seized in order to enforce a judgement.

25 Right of retention

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

26 Accession

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

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

27 Commingled goods

- (1) In this section, “**commingled goods**” means goods that are physically united with other goods in a way that their identity is lost in a product or mass.
- (2) A security interest may not be created in commingled goods unless the collateral to which a security interest has attached becomes commingled, in which case the security interest attaches to the product or mass.
- (3) If a security interest is perfected before the collateral becomes commingled, the security interest continues to be perfected in the product or mass.
- (4) For the purpose of subsection (3), the priority of the security interest in the product or mass is measured from the time of perfection of the security interest in the collateral that became commingled, except as limited by subsection (5)(c).
- (5) If more than one security interest attaches to the product or mass, the following rules determine priority:
 - (a) a security interest that is perfected has priority over a security interest that is unperfected at the time the collateral becomes commingled goods;
 - (b) the first security interest to attach to the product or mass has priority among unperfected security interest; and
 - (c) if more than one security interest is perfected, the perfected security interests rank equally in proportion to the value of the collateral at the time it become commingled.

28 Subordination

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

PART III ESTABLISHMENT AND FUNCTIONS OF FILING OFFICE

29 Establishment of Filing Office

- (1) There is hereby established for the purpose of this Act an office to be called the Filing Office.
- (2) The duties of the Filing Office are:
 - (a) to file all notices of security interest or other interests in movable property as required by this Act;
 - (b) to provide electronic means for filing of notices of security interest and lien;
 - (c) to search for notices;
 - (d) to perform any other duties conferred upon it by this Act or any other written law.
- (3) The purpose of information provided by the Filing Office is only to give notice of the possible existence of a security interest in the collateral.
- (4) The electronic records of the Filing Office shall be official records.
- (5) Information contained in a filed notice, including indices and other records created by the Filing Office with regard to the notices, are public records and may be inspected by any person.
- (6) The Filing Office shall be administered by such officers as the Public Service Commission shall appoint.

30 Sufficiency of notice

- (1) An initial notice of security interest is sufficient if the notice includes the following information:
 - (a) the notice must identify the debtor by name:
 - (i) the standard for correct name of a citizen of Solomon Islands shall be:

- (aa) if the debtor is a member of the Solomon Islands National Provident Fund, the name as it appears on his or her certificate of membership of the Fund;
 - (bb) if the debtor is not a member of the Solomon Islands National Provident Fund, the name as it appears on his or her birth certificate and any marriage certificates;
 - (cc) if the debtor is not a member of the Solomon Islands National Provident Fund and does not have a birth certificate, the name as it appears on his or her driver's licence; or
 - (dd) if the debtor has none of the foregoing types of identification document, his or her name as it appears on any other type of identification document registered with or issued by a government office;
- (ii) the standard for correct name of company or other organizations shall be the name shown on its information documents in the companies register; or
- (iii) the standard for correct name of a foreign individual shall be the name on his or her passport;
- (b) the notice must identify the secured party or an agent of the secured party by name and provide an address;
- (c) the notice must describe the collateral covered by the notice which description may be general or specific, and if the collateral is a fixture, the notice must describe the immovable property to which a fixture is to be affixed.
- (2) A debtor must authorise the filing of an initial notice by signing a security agreement or other record. A signature may be any tangible indication of the debtor's intent to enter into the agreement.
- (3) A notice may be file before a security agreement is concluded or before a security interest attaches to collateral.
- (4) A notice of lien may be filed as follows:

- (a) by a lien holder without the consent of the lienee;
 - (b) in the case of a lien on the property of a bankrupt company or individual by the trustee;
 - (c) upon a request of a plaintiff for whom a money judgement has been rendered, the notice of lien on the property of the judgement debtor may be filed by the Court;
 - (d) in the case of the movable property of a delinquent tax payer, the notice may be filed by the Commissioner of Inland Revenue; and
 - (e) in the case of a delinquent employer, the notice may be filed by the Board of the Solomon Islands National Provident Fund.
- (5) A notice substantially complying with the requirements of this section is effective unless it is seriously misleading, such as a notice that does not provide the correct name of the debtor.

31 Effectiveness of notice

- (1) A notice is effective at the time it is discoverable on the records of the Filing Office and is effective for a period of 5 years unless a continuation notice is filed before the period lapses.
- (2) A notice becomes ineffective when it lapses, and the security interest that was perfected by such notice becomes unperfected unless it is perfected by other means.

32 Amendment

- (1) An initial notice may be amended and where amended, the amended notice must:
 - (a) identify the initial notice by its file number;
 - (b) identify each secured party who authorises the amendment; and
 - (c) provide all information required for an initial notice.
- (2) An amended notice that adds collateral or adds a debtor must be

authorised by the debtor by signing the security agreement or other record.

- (3) An amended notice is effective only as to each secured party that authorises it.
- (4) An amended notice that adds collateral or a debtor is effective as to the added collateral or debtor from the date of filing of the amended notice.

33 Continuation

- (1) The period of effectiveness of a notice may be continued by filing a continuation notice that:
 - (a) identifies the initial notice by its file number; and
 - (b) identifies each secured party who authorises the continuation notice.
- (2) A continuation notice may be filed only within 6 months before the expiration of the effective period of the notice.
- (3) The effectiveness of the initial notice is extended for a further 5 years for each authorising secured party upon filing of a continuation notice.

34 Termination

- (1) The effectiveness of a notice may be terminated by filing a termination notice that:
 - (a) identifies the initial notice by its file number;
 - (b) identifies each secured party who authorises the termination notice; and
 - (c) indicates that the initial notice is no longer effective with respect to each secured party that authorises the termination notice.
- (2) Within 20 days after a secured party receives a written demand by the debtor, the secured party shall file a termination notice if:

- (a) there is no outstanding secured obligation and no commitment to make an advance or otherwise give value; or
 - (b) the debtor did not authorise the filing of the initial notice.
- (3) Within 20 days after the Commissioner of Inland Revenue or the Solomon Islands National Provident Fund receives a written demand, the Commissioner of Inland Revenue or the Solomon Islands National Provident Fund shall file a termination notice if the full payment of past due amounts, penalties and interest have been made.
- (4) A termination notice terminates the effectiveness of the initial notice as to each authorising secured party.

35 Notice of objection

- (1) A person may file a notice of objection to a notice of security interest that identifies the person as a debtor if the person believes that the notice is inaccurate or was wrongfully filed.
- (2) A notice of objection must:
 - (a) identify the notice to which it relates by its file number;
 - (b) provide the name of the person who files the notice of objection; and
 - (c) provide the basis for the person's belief that the notice of security interest is inaccurate or was incorrectly or wrongfully filed.
- (3) Filing of a notice of objection does not affect the effectiveness of a notice of security interest.

36 Refusal to file notice

- (1) The Filing Office may refuse to file a notice on any of the following grounds:
 - (a) in the case of an initial notice, the notice does not provide the name of a debtor;

- (b) in the case of an amended notice, the notice:
 - (i) does not provide the name of a debtor;
 - (ii) does not provide a file number of the initial notice;
 - (iii) identifies the initial notice for which effectiveness has lapsed;
 - (iv) does not identify an authorizing secured party;
- (c) in the case of a continuation notice, the notice:
 - (i) does not provide the file number of the initial notice;
 - (ii) identifies an initial notice for which effectiveness has lapsed;
 - (iii) was not presented within the 6 month period; or
 - (iv) does not identify an authorizing secured party;
- (d) in the case of a termination notice, the notice:
 - (i) does not provide the file number of the initial notice; or
 - (ii) has identified an initial notice that has lapsed; or
 - (iii) does not identify an authorizing secured party;
- (e) in the case of a notice of objection, the notice:
 - (i) does not provide a file number of the initial notice;
 - (ii) identifies an initial notice for which effectiveness has lapsed; or
 - (iii) does not name the person who files the notice;
- (f) the full filing fee is not tendered, or no arrangement has been made for payment of fees by any other means.

- (2) If the Filing Office refuses to file a notice under any of the grounds mentioned in subsection (1), it shall promptly communicate the fact

of and reason for its refusal to the person who presented the notice.

37 Other duties of the Filing Office

- (1) The duties of the Filing Office when a notice is filed are:
 - (a) to assign a unique filling number;
 - (b) to create a record that bears the number assigned to the initial notice and the date and time of filing; and
 - (c) to maintain the record for public inspection.
- (2) The Filing Office shall index notices by the name of the debtor and, for notices containing a serial number of a motor vehicle or serial numbered equipment, by the serial number.
- (3) The Filing Office shall return to the secured party filing the notice a copy of the electronic record of the notice to include the file number and the date and time of filing.
- (4) The Filing Office shall maintain the capability to retrieve a record by the name of the debtor, by the file number assigned to the initial notice and, for the notices containing the serial number of motor vehicle or serial numbered equipment, by serial number.
- (5) The Filing Office shall maintain records of lapsed notices for a period of 10 years beyond the date of lapse.
- (6) The duties of the Filing Office are administrative, and as such by filing a notice or refusing to file a notice, the Filing Office does not determine the sufficiency, correctness, authenticity or validity of any information contained in the notice.

38 Search and certification of reports

- (1) The Filing Office shall communicate the following information to any person who requests it:
 - (a) whether there exist in the Filing Office any effective notices that designate a particular file number, debtor name or serial number of a vehicle or item of serial numbered equipment;

- (b) the file number, and the date and time of filing of each notice;
 - (c) the name of each debtor and the name and address of each secured party on each notice; and
 - (d) all of the information contained in each notice.
- (2) If requested, the Filing Office shall issue a certified report of the results of a search that is an official record of the filing notice and the report is admissible in a court as evidence of the matters in the report without further proof.
- (3) Any person may request information from a secured party and the secured party may disclose any of the following information:
- (a) the nature and amount of the secured obligation;
 - (b) a detailed description of the collateral;
 - (c) the remaining balance on the obligation, whether or not the secured party has an obligation to make future advances under its agreement with the debtor;
 - (d) the duration of the obligation under the security agreement; and
 - (e) the identity of all debtors and secured parties who are parties to the security agreement.

PART IV ENFORCEMENT OF SECURITY INTEREST

39 Secured party rights upon default by the debtor

- (1) If the debtor defaults on an obligation to pay or perform the obligation, or if another default occurs, the security interest becomes enforceable.
- (2) Upon default, the secured party has:
- (a) the right to possession or control of the collateral, even if the security agreement is silent about possession or control;
 - (b) the right to dispose of the collateral; and

- (c) any other rights or remedies provided in the security agreement, under this Act or any other law.

40 Recovery without judicial process

- (1) Upon default, a secured party with a security interest in an account, secured sales contract account or payment intangible:
 - (a) may instruct the account debtor to make payment to the secured party; and
 - (b) shall apply such payment to the satisfaction of the obligation secured by the security interest after deducting the secured party's reasonable collection expenses.
- (2) Upon default, a secured party with a security interest in a document that is perfected by possession may proceed as to the goods covered by the document.
- (3) If so agreed, and in any event after default:
 - (a) a bank with a perfected security interest in a deposit account maintained by the bank may apply the balance of the deposit account to the obligation secured by the deposit account; and
 - (b) in other cases, a secured party that has a security interest in a deposit account perfected by control may instruct the bank to pay the balance of the account to the party's account.
- (4) The secured party may act under this section without judicial process, notwithstanding any other provision of this Act.

41 Expedited possession by secured party

- (1) In this section ***“breach of the peace”*** includes:
 - (a) entering without permission onto real property lawfully occupied by the debtor;
 - (b) resorting to physical violence or intimidation; or
 - (c) being accompanied by a law enforcement officer when taking possession or confronting the debtor.

- (2) For cases not covered by section 40, the secured party may take possession or control of collateral, without legal process and without a breach of the peace, if:
 - (a) the security agreement so provides; or
 - (b) the debtor has agreed in writing after default
- (3) If the collateral is a fixture, the secured party may remove it from the immovable property to which it is fixed without judicial process only if the debtor has agreed in writing after default.
- (4) If, upon default, the secured party cannot take possession or control of collateral without breach of the peace, or if the debtor does not agree after default to removal of collateral that is a fixture, the secured party may proceed as follows:
 - (a) the secured party may apply for an expedited hearing to the court for an order granting the secured party possession of the collateral; and
 - (b) the secured party shall serve on the debtor a copy of the application, including a copy of all supporting documents submitted to the court.
- (5) An application under subsection (4)(a) shall include a statement by the secured party, under oath, verifying the existence of the security agreement attached to the application and identifying at least one event of default by the debtor under the security agreement.
- (6) The court shall fix a hearing under subsection (4)(a) at the earliest available time, provided that the application shall not be heard without service of the application and reasonable notice of the hearing on the debtor unless the court is satisfied that:
 - (a) the secured party has made reasonable efforts to make service on the debtor and such efforts have not been successful; or
 - (b) the hearing should be conducted without delay to prevent damage to the collateral, substantive loss of the value of the collateral or the right to possession of the secured party.

- (7) If, after the hearing of an application, the court is satisfied that:
- (a) it is probable that a default has occurred under the security agreement; and
 - (b) the secured party has a secured right to take possession of the collateral,
- the court may grant an interim order for possession of the collateral pending a final order.
- (8) An order granted under subsection (7) may direct the debtor to take such action as the court thinks fit to allow the secured party to take possession.
- (9) If an interim order is granted under subsection (7) for possession of the collateral by the secured party, the secured party may make another application to the court for an order to sell or dispose of the collateral under section 42 unless the collateral is rare or unique, or otherwise of such nature that it is unlikely to be replaceable.
- (10) If the collateral is disposed of pending final order, the secured party shall retain possession of the proceeds of the disposition pending the final order, unless the court orders that the proceeds shall be held in escrow.
- (11) A secured party who takes possession of collateral under an order issued under subsection (7) shall use reasonable care in the custody and preservation of collateral in possession of the secured party, pending disposition under subsection (9) or a final order or such other orders as the court shall deem necessary.
- (12) Unless otherwise agreed, while the collateral is in the possession of the secured party, reasonable expenses may be charged to the debtor and secured by the collateral, including the cost of any insurance, payment of taxes or fees associated with the collateral.
- (13) Notwithstanding subsection (4), a secured party may seek orders with respect to collateral and to enforce his rights pursuant to the rules of civil procedure relating to enforcement of judgment.

42 Right to dispose of collateral

- (1) After default, a secured party may, either publicly or privately, lease or licence, sell or dispose of the collateral.
- (2) The secured party may buy at any public or private sale or disposition.

43 Commercial reasonableness required

- (1) In disposing of collateral, the secured party shall act in a commercially reasonable manner.
- (2) A sales is not commercially unreasonable merely because a better price could have been obtained by sale at a different time or by a different method from the time and method selected by the secured party.
- (3) A sale is commercially reasonable if the secured party disposes of the collateral in conformity with commercial practices among dealers in that that type of property.
- (4) If a method of disposition of collateral has been approved in any legal proceedings, the method is deemed to be commercially reasonable, but no such approval is required by this Act.

44 Notice of disposition

- (1) The secured party shall, not later than 10 days before disposing the collateral, give notice of disposition to the following persons:
 - (a) the debtor;
 - (b) any other secured party or lien holder who, 5 days before the date notice is given, held security interest or lien in the collateral that was perfected by filing; and
 - (c) any other person from whom the secured party received notice of a claim of an interest in the collateral if the notice was received before the secured party gives notice of the proposed disposition.
- (2) The debtor may waive the right to be notified, provided that the

waiver is given after the secured party has given possession of the collateral.

- (3) A notice of disposition is sufficient if the notice:
 - (a) identifies the debtor and the secured party;
 - (b) describes the collateral;
 - (c) states the method of intended disposition; and
 - (d) states the time and place of a public sale or time after which other disposition is to be made.
- (4) Subsection (1) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

45 Repair or preparation of collateral

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

46 Application of proceeds and clear title of buyer

- (1) The proceeds of disposition shall be applied in the following order of priority:
 - (a) the reasonable expense of retaking, holding, preparing for disposition, and disposing of the collateral, including reasonable legal expenses incurred by the secured party;
 - (b) the satisfaction of obligations secured by a senior security interest or lien;
 - (c) the satisfaction of the obligation secured by the security interest; and
 - (d) the satisfaction of obligations secured by any subordinate security interest or lien in the collateral if a written demand and proof of the interest are received before distribution of the proceeds is completed.

- (2) The secured party shall account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency.
- (3) If collateral is sold to a purchaser who acquires the interest for value and in good faith and takes possession of it, the purchaser acquires the collateral free from the interests of the secured party, debtor and any subordinate secured party or lien holder.

47 Retention of collateral by secured party

- (1) After default, the secured party may propose to the debtor to take all or part of the collateral in satisfaction of all or part of the debtor's obligation.
- (2) For the purpose of subsection (1), the secured party shall give notice of the proposal to the following persons:
 - (a) the debtor;
 - (b) any other secured party or lien holder who 5 days before the notice is given to the debtor, has perfected its security interest or lien by filing ; or
 - (c) any other person with an interest in the collateral who has given a written notice to the secured party before the notice is given to the debtor.
- (3) If the secured party receives objection in writing from the person entitled to receive notice under subsection (2) within 20 days after the notice was given, the secured party must dispose of the collateral under sections 41 to 45.
- (4) If no objection is received under subsection (3), the secured party may retain the collateral in satisfaction of the debtor's obligation in accordance with the proposal.

48 Redemption

- (1) A person who is entitled to receive a notice of disposition may redeem the collateral unless:
 - (a) the person has not, after the default, waived in writing the right to redeem;

- (b) the secured party has not yet disposed of or contracted for disposition of the collateral; and
 - (c) the secured party has not irrevocably elected to retain the collateral.
- (2) For the purpose of redeeming the collateral, the person must tender performance of all obligations secured by the collateral, and pay any reasonable expenses incurred to seize, hold, repair and prepare the collateral for disposition.

49 Remedies for secured party non compliance

- (1) If the secured party does not comply with any requirement of this Part, the court may, upon application, order or restrain the disposal of collateral.
- (2) If the collateral has been disposed, the debtor or any person entitled to be informed or whose security interest has been made known to the secured party before the disposal, has the right to recover from the secured party any loss caused by a failure to comply with this Part.

PART V MISCELLANEOUS

50 Regulations

- (1) The Minister may make regulations to give effect to the provisions of this Act, and in particular:
 - (a) to prescribe forms and fees required for the purpose of this Act;
 - (b) to prescribe matters required to be prescribed under this Act.

51 Repeal and transitional

- (1) The *Bill of Sales Act* is repealed.
- (2) This section applies to transactions concluded prior to the commencement of this Act that would be subject to this Act if it had been in effect at the time the prior transactions were concluded, and such transaction is referred to in this section as “prior transactions”.

- (3) The validity and effect of a prior transaction that was concluded before the commencement date of this Act shall be determined by reference to the law in effect when the agreement was concluded, except as provided otherwise under this section.
- (4) A secured party in a prior transaction:
 - (a) may file a notice of the interest in the same manner as provided for filing a notice of a security interest; and
 - (b) shall deliver a copy of the notice to the debtor.
- (5) If a secured party in a prior transaction filed a notice or otherwise perfected its interest by a means provided in this Act within 60 days after the commencement date of this Act:
 - (a) its priority shall be measured from the commencement date of this Act; or
 - (b) if the notice of an interest created by such a prior transaction was filed or otherwise perfected after 60 days after the commencement date of this Act, its priority shall be measured from the date of filing.
- (6) A priority between a security interest perfected under this Act and an interest created by a prior transaction for which a notice has not been filed under this section or otherwise effected under this Act shall be determined under this Act.
- (7) For the purpose of subsection (6), an interest created under the prior transaction is, for that purpose, deemed to be an unperfected security interest.

52 Consequential amendments

- (1) The *Bankruptcy Act* is amended:
 - (a) in section 44:
 - (i) by adding after paragraph (b) the following new paragraph:

“(c) movable property that is subject to a perfected

security interest, to the extent provided by section 49”; and

- (ii) by deleting “But it shall comprise” and substituting “But it shall, subject to paragraphs (a) to (c), comprise”;

- (b) by repealing section 49 and substitute the following section:

“Avoidance of general assignments of book debts unless registered

49 (1) If a person grants a security interest in movable property under the *Secured Transactions Act* and is subsequently adjudicated bankrupt, the security interest shall be void against the trustee as regards property identified as collateral, unless a notice of the security interest has been filed in the Filing Office of the security interest has otherwise been perfected under the *Secured Transactions Act* before the trustee files a notice of bankruptcy lien on the property of the bankrupt in the Filing Office.

(2) If the trustee determine that the value of the collateral subject to a perfected security interest exceeds the amount of the remaining secured obligation, the trustee may redeem the collateral by paying to the secured party the remaining amount of the obligation.

(3) For the purpose of subsection (2), the trustee may require the secured party to present the security agreement as evidence of the security interest and to present evidence of the amount of the remaining secured obligation in the form of the secured party’s records of account.”.

- (2) The *Solomon Islands National Provident Fund Act* is amended in section 46 by adding after subsection (1) the following new subsection:

“(1A) If payment of any contribution has not been made on or before the due date, a lien shall arise in the employer’s property to secure the payment of the amount of contribution, and the Board, or any officer, servant or agent authorized by the Board,

may file a notice of such lien in the Filing Office authorized by the *Secured Transactions Act* to establish the priority date and time of such lien.”.

- (3) Section 51 of the *Goods Tax Act* is amended in subsection (2) by inserting after “before the due date,” the following:

“a lien shall arise in the person’s goods and chattels to secure the payment of the amount of tax, and the Commissioner, may file a notice of such lien, in the Filing Office established by the *Secured Transactions Act*, to establish the priority date and time of such lien, and”.

- (4) The *Income Tax Act* is amended:

- (a) in section 88(1) by deleting “then the tax due by such person may be sued for and recovered as a Crown debt in a court of competent jurisdiction by the Commissioner, or any officer authorized by him in writing, in the official name of the Commissioner, with full costs of the suit from such person” and substituting the following paragraphs:

“then:

- (c) a lien shall arise in the person’s goods and chattels to secure the payment of the amount of tax, and the Commissioner, or any officer authorized by him in writing, may file a notice of such lien, in the Filing Office established by the *Secured Transactions Act*, to establish the priority date and time of such lien; and
- (d) the tax due by such person may be sued for and recovered as a Crown debt in a court of competent jurisdiction by the Commissioner, or any officer authorized by him in writing, in the official name of the Commissioner, with full costs of the suit from such person.”; and
- (b) in section 88(2), by deleting “subsection (1)” and substituting “subsection (1)(d)”;
- (c) in section 89:

- (i) in the proviso to subsection (1), by deleting “section 88” and substituting “section 88(1)(d)”;
- (iii) in subsection (4), by deleting everything after “chattels distrained upon,” and substituting the following:

“then towards satisfaction of any security interest or lien for which notice was filed in the Filing Office or otherwise perfected under the *Secured Transactions Act* before the earlier to occur of filing of the notice of lien under section 88(1)(d) or distraint of the goods and chattels under subsection (1), then towards the tax due, then towards any subordinate perfected security interests or lien according to their priority, and thereafter any surplus arising from such sale shall be restored to the owner of the goods and chattels distrained:”.

- (5) Section 123 of the *Land and Titles Act* is amended by adding after subsection (3) the following new subsection:

“(4) When an item of movable property becomes affixed to land, or to a structure that is itself attached to land, in such a way as to cause an interest in the fixture to arise in a person who has an interest in the land, priority in the fixture as between a holder of an interest in the land and a holder of an interest in the fixture shall be determined as provided by the *Secured Transactions Act*.”.

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
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

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LIST OF LEGISLATION

Secured Transactions Act 2008 (No. 4 of 2008)

Assent date	22 August 2008
Gazetted	5 September 2008
Commenced	31 August 2009

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LIST OF AMENDMENTS