



ANALYSIS

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**Schedule 1
Interpretation**

Schedule 2

Transactions to which Act does not apply

Schedule 3

Conflicts of laws rules

Schedule 4

Transitional provisions

An Act to provide for the following:

- (a) the creation of security interests in personal property; and
- (b) rules of priority for competing interests in personal property; and
- (c) the establishment of a personal property securities register for registering notices of security interests; and
- (d) simplified, expedited enforcement of security interests.

(8th December 2017)

The Parliament of the Cook Islands enacts as follows—

1 Title

This Act is the Personal Property Securities Act 2017.

2 Commencement

This Act comes into force on a date to be appointed by the Queen's Representative by Order in Executive Council.

Part 1

Preliminary matters

3 Interpretation

This Act must be interpreted in accordance with the definitions and other interpretative provisions set out in Schedule 1.

4 Application of this Act

(1) Subject to subsection (2), this Act applies,—

- (a) to every transaction that in substance creates or provides for a security interest in personal property; and
- (b) without limiting paragraph (a), to—
 - (i) any transaction nominally called a chattel mortgage, hire purchase, conditional sale, floating charge, fixed charge, pledge, trust indenture, trust receipt, debenture secured by collateral; and
 - (ii) an assignment, consignment, lease, trust, or transfer of chattel paper that secures payment or performance of an obligation; and
 - (iii) a security interest granted by a person to a financial institution in a deposit account maintained by that financial institution.

(2) This Act does not apply to the transactions set out in Schedule 2.

(3) The retention of title by a seller of goods has no effect other than the taking of a security interest in the goods.

- 5 Act binds the Crown**
This Act binds the Crown.

Part 2

Security interests

Subpart 1—Key concepts

- 6 What this Act is about**
This Act mainly relates to—
- (a) the enforceability of an interest (a **security interest**) in personal property created or provided for by a transaction that secures payment of money or performance of an obligation;
 - (b) how to determine priority between security interests in the same personal property;
 - (c) how to determine priority between a security interest and another type of interest (for example, the interest of a buyer of goods) in the same personal property.
- 7 What is security interest**
- (1) In outline, a security interest is the interest of a person (the **secured party**) in the personal property of another person (the **debtor**) that is created or provided for by a transaction securing payment of money or performance of an obligation.
 - (2) **Security interest** is fully defined in clause 2 of Schedule 1.
 - (3) The personal property that is subject to a security interest is called **collateral**.

Subpart 2—Security agreement

- 8 Form and effect of security agreement**
- (1) A security agreement—
 - (a) must be in written form or in an electronic form that can be printed; and
 - (b) must be signed by the debtor for a security interest to attach; and
 - (c) may consist of 1 or more writings or electronic records that, taken together, establish the intent of the parties.
 - (2) A security agreement may provide for future advances.
 - (3) A security agreement may provide for a security interest in after-acquired property, that is, property that the debtor acquires after the security agreement has been made.
 - (4) A security agreement is effective between the parties and against third parties such as purchasers and other creditors, except as provided by this Act.
- 9 Accelerated payment or performance by debtor**
- (1) A security agreement may provide that the secured party may accelerate payment or performance by the debtor when—
 - (a) the debtor is in default; or
 - (b) the collateral is at risk; or
 - (c) payment or other performance by the debtor is at risk.

- (2) For the purposes of subsection (1),—
 - (a) the collateral is at risk if the secured party has commercially reasonable grounds to believe that the collateral has been or will be destroyed, damaged, endangered, disassembled, removed, or concealed contrary to the security agreement;
 - (b) payment or other performance by the debtor is at risk if the secured party has commercially reasonable grounds to believe that the debtor is or will be unable to pay or otherwise perform the debtor's obligations under the security agreement.
- (3) The secured party has the onus of proving the existence of the grounds listed in subsection (1).

Subpart 3—Security interest

10 Obligations

A security interest may secure 1 or more of the following types of obligations—

- (a) an obligation that is described specifically or generally;
- (b) a monetary or non-monetary obligation;
- (c) a pre-existing, present, or future obligation;
- (d) a line of credit.

11 Security interest in consumer goods

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

12 Description of collateral

- (1) For the purposes of attachment of a security interest, a description of collateral is sufficient if it—
 - (a) describes the collateral by item or kind in a manner that enables the collateral to be identified; or
 - (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 property.
- (2) In the case of consumer goods, to be sufficient the description must describe the goods specifically.

13 Continuity of security interest

A security interest continues in collateral despite the sale, lease, licence, exchange or other disposal of the collateral, unless otherwise agreed or provided by this Act.

Security interest: attachment

14 Attachment of security interest to collateral

- (1) A security interest attaches to collateral and is enforceable when—
 - (a) the secured party has given value; and

- (b) the debtor has rights in the collateral; and
- (c) 1 of the following conditions is met—
 - (i) the debtor has entered into and signed a security agreement that sufficiently describes the collateral;
 - (ii) the secured party has possession of the collateral and a security interest in that type of collateral may be perfected by possession;
 - (iii) the secured party has control of the collateral and a security interest in that type of collateral may be perfected by control.
- (2) However, the security agreement may specify a later time for attachment of the security interest, in which case the security interest attaches at that later time.
- (3) To avoid doubt, a reference in a security agreement to a floating charge is not an agreement that the security interest created by the floating charge attaches at a later time than the time determined by subsection (1).
- (4) Unless otherwise agreed or provided by this Act, a security interest automatically attaches to proceeds.
- (5) Notice to the account debtor is not required for the attachment or perfection of a security interest in present or future accounts receivable, a secured sales contract, or a payment intangible.

15 Attachment: when debtor has rights in collateral

- (1) In the case of collateral being goods leased, goods consigned, or goods conditionally sold to the debtor, the debtor has rights in the collateral on obtaining possession of the goods, if not before.
- (2) In subsection (1), **goods conditionally sold** includes goods sold under an agreement that provides for the retention of title by the seller.

Subpart 4—Perfection of security interest

16 Perfection and priority

- (1) The priority of enforceable security interests in the same collateral depends upon—
 - (a) whether 1 or more of the security interests is perfected;
 - (b) if more than 1 is perfected, the order in which the security interests were perfected;
 - (c) if none is perfected, the order in which the security interests were attached;
 - (d) whether this Act provides otherwise for determining priority.
- (2) A security interest may be—
 - (a) perfected by registration of a finance notice; or
 - (b) perfected by possession of the collateral; or
 - (c) perfected by control of the collateral; or
 - (d) automatically perfected.

17 What is perfection of security interest

- (1) Perfection of a security interest in collateral means that the steps have been taken that are necessary to optimize the priority of that security interest over the interests of third parties.
- (2) More than 1 security interest may be perfected in respect of the same collateral.

18 When security interest perfected

A security interest is perfected when—

- (a) it has attached to the collateral; and
- (b) 1 or more of the following means of perfection occurs or has occurred—
 - (i) registration of a finance notice;
 - (ii) possession of the collateral by the secured party or that person's agent;
 - (iii) control of the collateral by the secured party or that person's agent;
 - (iv) automatic perfection in accordance with this Act.

19 General rule: perfection by registration of finance notice

- (1) In all cases except those set out in section 20, a security interest must be perfected by registration of a finance notice.
- (2) A security interest in a motor vehicle is perfected by registration of a finance notice that describes the motor vehicle generally or by serial number, except that description by serial number is required for priority as against a buyer or lessee of the vehicle.

20 Perfection in particular cases

The following rules apply in particular cases—

- (a) a purchase money security interest in consumer goods is automatically perfected on attachment of the security interest;
- (b) a security interest in chattel paper, goods, a document of title, an investment security, or a negotiable instrument may be perfected by the secured party taking possession of the collateral (but may also be perfected by registration);
- (c) a security money interest in money (excluding cash proceeds) is perfected only by the secured party taking possession of the money;
- (d) a security interest in a deposit account is perfected only by the secured party having control of the deposit account.

21 Perfection in relation to proceeds

- (1) On the disposal of collateral, a security interest attaches to the proceeds of the collateral and is continuously perfected if the security interest in the collateral was perfected.
- (2) However, the security interest in proceeds becomes unperfected 15 working days after the debtor receives the proceeds unless the proceeds are—
 - (a) identifiable cash proceeds; or
 - (b) described by the collateral description in the finance notice registered in respect of the collateral.

- (3) A security interest in proceeds must be treated as perfected at the time the security interest in the collateral was perfected.

22 Meaning of possession for purposes of perfection

- (1) For the purposes of perfection, a person (**P**) takes possession of an investment security if,—
 - (a) for an investment security that is evidenced by a security certificate, P takes physical possession of that certificate;
 - (b) for an investment security that is traded or settled through a clearing house or securities depository, the clearing house or securities depository records P's interest in the investment security;
 - (c) for an investment security to which neither paragraph (a) nor (b) applies, the records maintained by or on behalf of the issuer record P's interest in the investment security;
 - (d) for an investment security that is held by a nominee, the records of the nominee record P's interest in the investment security.
- (2) For the purposes of perfection, a person (**P**) takes possession of a negotiable instrument if—
 - (a) P takes physical possession of the negotiable instrument; or
 - (b) for a negotiable instrument that is traded or settled through a clearing house or securities depository, the clearing house or securities depository records P's interest in the negotiable instrument.
- (3) For the purposes of perfection, a secured party is not in possession or control of collateral that is in the actual or apparent possession or control of the debtor or the debtor's agent.

23 Continuity of perfection

- (1) A security interest is continuously perfected for the purposes of this Act if it is first perfected in 1 manner and later perfected in another manner, with no intervening period during which the security interest is unperfected.
- (2) A continuously perfected security interest must be treated as perfected by the method by which it was originally perfected.
- (3) The assignment of a perfected security interest does not require the registration of a new finance notice for perfection of the security interest to continue.

24 Lapse of perfection

Perfection of a security interest that is perfected by registration lapses at the end of the period of effectiveness of the finance notice unless—

- (a) the notice is continued by filing a continuation notice; or
- (b) perfection occurs by another means before lapse.

Part 3

Priority of security interests

Subpart 1—General

25 Meaning of priority

The priority of a security interest means the right of the secured party to enforce a security interest in collateral ahead of another person's interest in the same collateral.

26 Rules for determining priority between security interests

- (1) A perfected security interest has priority over an unperfected security interest in the same collateral.
- (2) Priority between perfected security interests in the same collateral (where perfection has been continuous) must be determined by the order of perfection.
- (3) Priority between unperfected security interests in the same collateral must be determined by the order of attachment of the security interests.

Subpart 2—Priority rules in particular cases

Advances

27 Priority of security interest applies to all advances

A security interest has the same priority in respect of all advances, including future advances.

Proceeds

28 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.

Purchaser of secured sales contract, etc

29 Purchaser of secured sales contract, instrument, or investment security has priority

- (1) A purchaser in the ordinary course of business of a secured sales contract or an instrument has priority over a perfected security interest in a secured sales contract or instrument if—
 - (a) the purchaser gives value; and
 - (b) the purchaser takes possession of the secured sales contract or instrument; and
 - (c) the secured sales contract or instrument does not indicate an assignment to the secured party.
- (2) A purchaser in the ordinary course of business of an investment security has priority over a perfected interest in the investment security if the purchaser—
 - (a) the purchaser gives value; and
 - (b) takes possession of the investment security; and

- (c) acquires the investment security without knowledge of the security instrument.

Transferee of collateral

30 Transfer for value without knowledge of security interest

A transferee of collateral takes the collateral free of a security interest if—

- (a) the transferee gives value; and
- (b) the transferee takes possession of the collateral without knowledge of the security interest and before the security interest is perfected.

31 Purchaser or lessee in ordinary course of business

- (1) A purchaser or lessee of goods in the ordinary course of business takes the collateral free of a security interest.

- (2) Subsection (1)—

- (a) applies whether or not the security interest is perfected; and
- (b) applies whether or not the purchaser or lessee knew of the security interest; and
- (c) prevails over section 3 of the Mercantile Law Act 1908 (NZ) and section 27 of the Sale of Goods Act 1908 (NZ) or equivalent provisions to the extent that they apply in the Cook Islands.

32 Transferee of consumer goods below specified value

- (1) A transferee of goods that are acquired as consumer goods takes the goods free of any security interest if—

- (a) the value of the goods does not exceed \$2,000 on attachment; and
- (b) the transferee gives new value for the goods; and
- (c) the transferee acquires the goods without knowledge of the security interest.

- (2) In subsection (1)(a), **on attachment** means—

- (a) at the time when the security interest attaches; or
- (b) if there is more than 1 security interest in the goods, at the time when the security interest with priority over all other security interests attaches.

- (3) The Queen's Representative may, from time to time, by Order in Executive Council, alter the amount specified in subsection (1)(a).

33 Purchaser or lessee of motor vehicle

A purchaser or lessee of a motor vehicle takes the vehicle free of a security interest perfected by registration if—

- (a) the purchaser or lessee takes the vehicle without knowledge of the security interest; and
- (b) the serial number of the vehicle was omitted from, or not correctly included in, the finance notice registered in respect of the vehicle.

34 Transferee of cash for value

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

35 Sale of goods with consent of secured party

A purchaser of goods takes free of a perfected security interest in the goods if the secured party consents to the sale.

36 Execution creditor

- (1) An execution creditor may register a finance notice in respect of the execution creditor's interest in collateral.
- (2) Subject to section 42 (Priority as between purchase money security interest and execution creditors), an execution creditor has priority over any security interest in collateral if the security interest is not perfected at the time of execution.
- (3) In subsection (2), **time of execution** means—
 - (a) the time of seizure of the collateral; or
 - (b) in any other case, the time of registration of a finance notice in respect of the execution creditor's interest in the collateral.

*Liens***37 Lien has priority over security interest**

A lien arising out of materials or services provided in respect of goods has priority over a security interest in the same goods if—

- (a) the goods are in the possession of the person claiming the lien; and
- (b) the materials or services relating to the lien were provided in the ordinary course of business; and
- (c) the lien has not arisen under another enactment that excludes the lien's priority; and
- (d) the lien holder provided the materials or services without knowledge of any prohibition on granting a lien contained in the security agreement relating to the security interest.

*Purchase money security interests***38 Purchase money security interest: general rule**

A purchase money security interest in collateral other than inventory, livestock, or intangibles, has priority over a non-purchase money security interest in the same collateral given by the same debtor if the purchase money security interest in the collateral or its proceeds is perfected not later than 10 working days after the day on which the debtor, or the debtor's agent, obtains possession of the collateral.

39 Purchase money security interest: inventory or livestock

- (1) A purchase money security interest in inventory, livestock, or their proceeds has priority over a non-purchase money security interest in the same collateral given by the same debtor if the purchase money security interest in the inventory, livestock, or proceeds is perfected at the time when the debtor, or the debtor's agent, obtains possession of the collateral.
- (2) The security interest of a consignor of goods under a commercial consignment is a purchase money security interest in inventory.

40 Purchase money security interest: intangibles

A purchase money security interest in an intangible or its proceeds has priority over a non-purchase money security interest in the same collateral given by the same debtor if the purchase money security interest in the intangible or its proceeds is perfected not later than 10 working days after the day on which it attaches.

41 Priority as between competing purchase money security interests

A purchase money security interest in goods or their proceeds taken by a seller, lessor, or consignor of the collateral (**interest A**) has priority over another purchase money security interest in the same collateral given by the same debtor if interest A is perfected,—

- (a) in the case of inventory or livestock, at the time when the debtor, or the debtor's agent, obtains possession of the collateral; or
- (b) in the case of collateral other than inventory or livestock, not later than 10 working days after the day on which the debtor, or the debtor's agent, obtains possession of the collateral.

42 Priority as between purchase money security interest and execution creditors

A purchase money security interest has priority over the interest of an execution creditor,—

- (a) in the case of collateral other than an intangible, if the purchase money security interest is perfected not later than 10 working days after the day on which the debtor, or the debtor's agent, obtains possession of the collateral; or
- (b) in the case of collateral that is an intangible, if the purchase money security interest is perfected not later than 10 working days after the day on which it attaches.

43 Status of purchase money security interest

Except in the case of a consumer goods transaction, a purchase money security interest remains such even if—

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

*Fixtures***44 Security interest in fixtures**

- (1) A security agreement may provide for a security interest in fixtures and a security interest in goods may continue if the goods become fixtures.
- (2) In sections 45 to 48, **the real property** means the real property to which the goods in question are affixed.

45 Priority of perfected security interest in fixtures

Subject to section 48 (Security interest in fixtures subordinate to construction mortgage), a perfected security interest in fixtures has priority over a claim to the fixtures made by a person with an interest in the real property if the security interest is perfected before the goods become fixtures.

46 Priority of purchase money security interest in fixtures

Subject to section 48 (Security interest in fixtures subordinate to construction mortgage), a purchase money security interest in goods that attaches before or at the time when the goods become fixtures has priority over a claim to the fixtures made by a person with an interest in the real property if the purchase money security interest is perfected not later than 10 days after the day on which the goods become fixtures.

47 Security interest in fixtures subordinate to claim of person with interest in real property

- (1) This section applies to a security interest in goods that attaches after the goods become fixtures.
- (2) The interest of the following persons in the fixtures has priority over the security interest in the fixtures—
 - (a) a person who has an interest in the real property at the time when the goods became fixtures and who—
 - (i) has not consented to the security interest in the fixtures; and
 - (ii) has not disclaimed an interest in the fixtures; and
 - (iii) has not entered into an agreement under which another person is entitled to remove the fixtures; and
 - (iv) is otherwise entitled to prevent the debtor from removing the accession;
 - (b) a person who acquires an interest in the goods after they become fixtures, if the interest is acquired without fraud and before a finance notice is registered in respect of the fixtures.

48 Security interest in fixtures subordinate to construction mortgage

- (1) A security interest in fixtures is subordinate to a claim to the fixtures made by a person with an interest in the real property if—
 - (a) that person's interest is secured by a construction mortgage; and
 - (b) the mortgage is registered before the goods become fixtures; and
 - (c) the goods become fixtures before the completion of the construction.
- (2) A mortgage is a construction mortgage to the extent that,—
 - (a) as provided by a registered mortgage, it secures an obligation incurred for the construction of an improvement on real property, including the acquisition cost of the real property; or
 - (b) the mortgage is given to refinance a mortgage described in paragraph (a).

49 Savings for fixtures subject to mortgage of land

Nothing in this Act—

- (a) affects the creation of a mortgage over fixtures under the law relating to real property;
- (b) requires a notice of a mortgage over fixtures under the law relating to real property to be registered under this Act to perfect or enforce the interest or rights of the mortgagee.

Accessions

50 Security interest in accessions

A security interest in goods that become an accession continues in the accession.

51 Priority of security interest in goods before they become accessions

Except as otherwise determined in this Act, a security interest in goods that is perfected at the time when the goods become an accession has priority over a claim to the goods as an accession made by a person with an interest in the whole.

52 Certain interests in whole have priority over security interests in goods before they become accessions

- (1) This section applies to a security interest in goods that is attached at the time when the goods become an accession.
- (2) The interest of any of the following persons has priority over the security interest in the accession—
 - (a) a person who acquires for value an interest in the whole after the goods become an accession 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 an accession, but before the security interest in the accession is perfected;
 - (c) a person with a perfected security interest in the whole who makes an advance under the security agreement relating to the security interest after the goods become an accession, but before the security interest in the accession is perfected, and only to the extent of the advance;
 - (d) a person with a perfected security interest in the whole who acquires the right to retain the whole in satisfaction of the obligation secured after the goods become an accession, before the security interest in the accession is perfected.

53 Certain interests have priority over security interests in goods that are not attached when goods become accession

- (1) This section applies to a security interest in goods that attaches after the goods become an accession.
- (2) The interest of the following persons has priority over the security interest in the accession—
 - (a) a person who has an interest in the other goods at the time when the goods became an accession and who—
 - (i) has not consented to the security interest in the accession; and
 - (ii) has not disclaimed an interest in the accession; and

- (iii) has not entered into an agreement under which another person is entitled to remove the accession; and
 - (iv) is otherwise entitled to prevent the debtor from removing the accession:
- (b) a person who acquires an interest in the whole after the goods become an accession, but before the security interest in the accession is perfected.

Processed or commingled goods

54 Continuation of security interest in goods that become part of processed or commingled goods

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.

55 Original method of perfection applies to goods that become part of processed or commingled goods

Perfection of a security interest in goods that subsequently become part of a product or mass must be treated as perfection of the security interest in the product or mass.

56 Limit on value of priority of goods that become part of processed or commingled goods

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 become part of the product or mass.

57 Priority between perfected and unperfected security interests continuing in processed or commingled goods

- (1) A perfected security interest continuing in the product or mass has priority over an unperfected security interest continuing in the same product or mass.
- (2) For the purposes of this section and sections 58 and 59, the obligation secured by a security interest does not exceed the value of the goods on the day on which the goods became part of the product or mass.

58 Priority between perfected security interests continuing in processed or commingled goods

If more than 1 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 the perfected security interests in the same product or mass.

59 Priority between unperfected security interests continuing in processed or commingled goods

If more than 1 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 the unperfected security interests in the same product or mass.

60 Priority of purchase money security interest in goods that continues in processed or commingled goods

Despite sections 57 to 59, 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;
- (b) a non-purchase money security interest in the product or mass given by the same debtor.

*Crops***61 Priority of security interest in crops**

- (1) A security interest in crops is a security interest in the crops while growing and afterwards when cut or separated from the soil.
- (2) For the purpose of determining whether a security interest exists in crops cut or separated from the soil, it does not matter 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 on the land on which the crops are growing.
- (4) A perfected security interest in crops growing on real property has priority over the interest of an owner, mortgagee, or other person with an interest in the land if the debtor has a registered interest in or is in possession of the land.
- (5) An unperfected security interest in crops is subordinate to the rights of an execution creditor who causes the land to be seized to enforce a judgment.

Part 4 Registration

Subpart 1—Register of personal property securities

62 Registrar

- (1) There must be a Registrar of Personal Property Securities appointed under the Public Service Act 1995-96.
- (2) The person holding office as Registrar of Companies immediately before the commencement of this Act is the first person appointed under subsection (1).

63 Power of Registrar to delegate

- (1) The Registrar may from time to time, delegate to any person all or any of the functions, duties, and powers exercisable by the Registrar under this Act, except this power of delegation.
- (2) Every delegation under this section is revocable in writing at will, and no such delegation prevents the exercise of any function, duty, or power by the Registrar.
- (3) Every delegation under this section, until revoked, continues in force according to its tenor, even if the Registrar by whom it was made has ceased to hold office.

64 Personal property securities register

- (1) The Registrar must ensure that there is established and maintained an electronic register of personal property security interests known as the personal property securities register.
- (2) The function of the register is the electronic registration, indexing, storage, retrieval, and search of notices filed with the Registrar.

65 Operation of register

- (1) The register must be operated at all times, except that the Registrar may suspend the operation of the register, in whole or in part,—
 - (a) for maintenance; or
 - (b) if the Registrar considers that it is not practical to provide any service or services relating to the register.
- (2) No person has a claim against the Registrar for—
 - (a) any error in registration by the Registrar or the Registrar's staff; or
 - (b) failure to provide registry services beyond the Registrar's control.
- (3) The Registrar, by registering or refusing to register a notice, does not determine the sufficiency, correctness, authenticity, or validity of the notice or any information contained in it.

66 Contents of register

The register must contain, in respect of each security interest,—

- (a) the data required to register the interest;
- (b) any changes in the data required to register it;
- (c) any other data specified in the regulations.

67 Search of register

- (1) A notice that is registered under this Act is a public record.
- (2) Any person may search the register, and obtain a printed search result, in accordance with this Act and the regulations.

Subpart 2—Registrable notices

68 What is registrable notice

A registrable notice is any of the following—

- (a) a finance notice;
- (b) an amendment notice;
- (c) a continuation notice;
- (d) a discharge notice;
- (e) a transitional notice.

69 Person may file registrable notice

Any person may file a registrable notice in accordance with this Act and the regulations.

70 Requirements for registrable notice

For a registrable notice to be registered, it must—

- (a) be filed electronically with the Registrar using the prescribed form or format; and
- (b) contain the data required by this Act or the regulations to register the notice; and
- (c) be accompanied by the prescribed fee.

71 Time of registration

A registrable notice is registered at the time that a registration number, date, and time is assigned to it in the register.

72 Registrable notice effective unless seriously misleading

A registrable notice is effective, for the purposes of registration, even if insufficient in 1 or more aspects, unless the insufficiency makes the notice seriously misleading.

Subpart 3—Registration of notices

73 What is finance notice

- (1) A finance notice contains the data to be entered in the register to effect a registration for the purposes of perfecting a security interest in collateral under this Act.
- (2) A finance notice may be registered before or after—
 - (a) a security agreement is made; or
 - (b) a security interest has attached.
- (3) A finance notice may relate to 1 or more security agreements.

74 Data required to register finance notice

- (1) A finance notice must contain the following data—
 - (a) if the debtor is an individual, the debtor's name and physical address;
 - (b) if the debtor is an organisation,—
 - (i) the name and address of the organisation; and
 - (ii) the name and contact details (including email address) of the person acting on its behalf;
 - (c) if the secured party is an individual, the secured party's name and address;
 - (d) if the secured party is an organisation,—
 - (i) the name and address of the organisation; and
 - (ii) the name and contact details (including email address) of the person acting on its behalf;
 - (e) a description of the collateral;
 - (f) if the collateral is fixtures or timber to be cut or as-extracted collateral, the address or other sufficient description of the location of the collateral;
 - (g) any other data required by this Act or the regulations to be contained in the finance notice.
- (2) For the purposes of subsection (1), **name** means—
 - (a) in the case of an individual who is a citizen of the Cook Islands, the name of the individual that appears in—

- (i) his or her passport; or
- (ii) if the individual has no passport, in his or her Cook Islands driver's licence; or
- (iii) if the individual has neither a passport nor a Cook Islands driver's licence, any other type of identification document issued by the Government of the Cook Islands:
- (b) in the case of an individual who is not a citizen of the Cook Islands, the name of the individual that appears in his or her passport:
- (c) in the case of an entity incorporated or registered under the laws of the Cook Islands, its registration number:
- (d) in the case of an entity to which paragraph (c) does not apply, the name of the entity as it appears on the document creating the entity.

75 Defect in name of debtor

For the purposes of section 72, a finance notice that incorrectly or insufficiently states the name of the debtor is seriously misleading.

76 Validity of registration when description of part of collateral omitted

Failure to include a description of any item of collateral in a finance notice does not affect the validity of the registration in respect of the description of other collateral included in the finance notice.

77 Debtor must authorise filing of finance notice

- (1) The filing of a finance notice with the Registrar for registration must be authorised by the debtor.
- (2) The debtor authorises filing by—
 - (a) signing a security agreement in respect of the collateral, and the signed security agreement is taken to authorise filing a finance notice in respect of the collateral and proceeds, whether the agreement expressly covers proceeds or not; or
 - (b) signing a separate authority to file.
- (3) A debtor may authorise filing before or after registration.
- (4) The Registrar is not required, whether before or after registering a finance notice, to ascertain whether the debtor has authorised filing.
- (5) This section does not apply to the filing of a finance notice by an execution creditor.

Duration and continuation of registration

78 Duration of registration of finance notice

- (1) Subject to section 79 (Continuation of registration of finance notice), the registration of a finance notice is effective until the first to occur of—
 - (a) expiry of 5 years counted from the time and date of registration of the finance notice; or
 - (b) discharge of the registration.
- (2) The Registrar may remove a registration when it has expired or been discharged.

79 Continuation of registration of finance notice

- (1) The registration of finance notice may be continued by registering a continuation notice not later than 6 months before the registration is due to expire.
- (2) Except as otherwise provided by this Act or the regulations, the registration of a finance statement continued under subsection (1) is effective until the first to occur of—
 - (a) expiry of 5 years counted from the time and date of registration of the continuation notice; or
 - (b) discharge of the registration.

*Amendment or discharge of registration of finance notice***80 Amendment of registration**

- (1) The registration of a finance notice may be amended by the registration of an amendment notice that amends, deletes, adds to, or otherwise varies the data contained in the finance notice.
- (2) The discharge of the registration may be amended by the registration of an amendment notice.
- (3) To be effective, the filing of an amendment notice must be authorised—
 - (a) by the current debtor, if the notice adds or substitutes collateral;
 - (b) by the new debtor, if the notice adds or substitutes a debtor.
- (4) Filing is authorised by the debtor signing a written authority, and the debtor may authorise filing before or after registration of the amendment notice.
- (5) The Registrar is not required, whether before or after registering an amendment notice, to ascertain whether the debtor has authorised filing.
- (6) Subsection (3) does not apply to the filing of an amendment notice by an execution creditor.

81 Time of registration of amendment

- (1) An amendment notice may be registered at any time while the registration of the finance notice is effective.
- (2) The amendment is effective from the time that the amendment is registered.

82 Discharge of registration

- (1) Registration of a finance notice may be discharged, partly or wholly, by the registration of a discharge notice that specifies—
 - (a) the extent to which the registration of the finance notice is discharged; and
 - (b) the date of discharge, if any.
- (2) If no date of discharge is specified, the registration is discharged on registration of the notice of discharge.

83 Mandatory discharge of registration

- (1) A debtor may by written notice to a secured party or execution creditor require the secured party or execution creditor to file a discharge notice if—

- (a) all obligations under the security agreement creating the security interest are performed; or
 - (b) the debtor did not authorise the filing of the finance notice.
- (2) The secured party or execution creditor must file the discharge notice within 15 working days after receiving the notice, unless the registration in any event expires within the 15-working day period.

Subpart 4—Removal of data, and restoration and correction of registration

84 Removal of data from register

The Registrar may remove data in the registration of a finance notice from the register when the registration is no longer effective.

85 Registrar may restore registration

- (1) The Registrar may restore the registration of a finance notice if it appears to the Registrar that, due to a clerical or other error made by the Registrar or the Registrar's staff, the registration has been incorrectly discharged or removed.
- (2) A registration restored under subsection (1) must be treated as having continued in force as if it had not been discharged or removed.

Part 5 Enforcement of security interests

Subpart 1—Preliminary

86 Security interests to which this Part applies

- (1) This Part applies to all security interests except those created or provided for by—
- (a) a transfer of an account receivable or chattel paper; or
 - (b) a lease for a term of more than 1 year that does not secure payment or performance of an obligation; or
 - (c) a commercial consignment that does not secure payment or performance of an obligation.
- (2) This Part does not apply to a receiver appointed under Part 15 of the Companies Act 2017.

Subpart 2—Rights of secured party

Outline of rights of secured party on debtor's default

87 Debtor default: secured party's rights

On the default of the debtor, a secured party has the following rights—

- (a) to apply the collateral in certain cases in satisfaction of the secured obligation (*see* section 88);
- (b) to dispose of collateral (*see* section 89);
- (c) to retain the collateral if there is no objection (*see* section 100).

*Right to apply collateral***88 Secured party may apply collateral in certain cases**

- (1) A secured party may apply collateral to the satisfaction of the obligation secured if—
- (a) the debtor is in default under the security agreement; and
 - (b) the collateral is 1 of the following—
 - (i) an account receivable;
 - (ii) an investment security;
 - (iii) money;
 - (iv) a negotiable instrument in the form of a debt; and
 - (c) the secured party has priority over all other secured parties.
- (2) In the case of collateral that is an account receivable, the secured party—
- (a) may instruct the account debtor to make payment to the secured party; and
 - (b) must apply that payment to satisfaction of the obligation secured after deducting the secured party's reasonable collection costs.

*Right to dispose of collateral***89 Secured party may take possession of and sell collateral**

- (1) A secured party may take possession of and sell collateral if—
- (a) the debtor is in default under the security agreement; or
 - (b) the collateral is at risk.
- (2) In subsection (1), collateral is **at risk** if the secured party has commercially reasonable grounds to believe that the collateral has been or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold, or otherwise disposed of contrary to the provisions of the security agreement.

90 Duty to obtain best price reasonably obtainable

A secured party who sells collateral under section 89 owes a duty to the following persons to obtain the best price reasonably obtainable as at the time of sale—

- (a) the debtor;
- (b) any person who has registered a finance notice in the collateral that is effective at the time that the secured party took possession of the collateral;
- (c) any other person (**P**) who has given the secured party notice that P claims an interest in the collateral.

91 Meaning of best price reasonably obtainable

For the purposes of section 90, a sale is not unreasonable merely because a better price could have been obtained by a sale at a different time or by a different method from the time and method adopted by the secured party.

92 Apparent possession of certain collateral permitted in some cases

- (1) A secured party with priority over all other secured parties may take possession of collateral by taking apparent possession, if the collateral is of a kind—
- (a) that cannot be readily moved from the debtor's premises; or
 - (b) for which adequate storage facilities are not readily available.
- (2) If subsection (1) applies, the secured party may dispose of the collateral on the debtor's premises, but must not cause the person in possession of the premises any greater inconvenience than is necessary.

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

If the collateral is a document of title, the power of sale under section 89 applies to the document of title and to the goods to which it relates.

94 Procedure for sale of collateral

- (1) A secured party may sell the collateral by auction, public tender, private sale, or another method.
- (2) A secured party who intends to sell collateral under section 89 must, not less than 10 working days before selling the collateral, give notice to the following persons—
- (a) the debtor;
 - (b) any person who has registered a finance notice in the collateral that is effective at the time that the secured party took possession of the collateral;
 - (c) any other person (**P**) who has given the secured party notice that P claims an interest in the collateral.
- (3) Subsection (2) does not apply if—
- (a) there are reasonable grounds for believing that immediate disposal is necessary (for example, because the goods will perish, or substantially decline in value, or the cost of care and storage is disproportionate); or
 - (b) the persons entitled to notice under subsection (2) consent in writing to immediate sale; or
 - (c) the collateral is foreign currency; or
 - (d) the collateral consists of inventory; or
 - (e) the security interest arises under an instrument creating a charge on the property of a body corporate that comprises all, or substantially all, of the assets of the body corporate; or
 - (f) for any other reason, the Court on an *ex parte* application is satisfied that a notice is not required.
- (4) If part only of the collateral is described in subsection (3), the secured party may sell that part without complying with subsection (2).

95 Extinguishment of subordinate security interests on sale

The sale of collateral under section 89 extinguishes all security interests in the collateral and its proceeds that are subordinate to the security interest of the seller.

96 Secured party must account to debtor

A secured party who sells collateral under section 90 must, within 15 working days after the sale of the collateral, give the persons listed in section 94(2) a statement of account in writing that shows—

- (a) the amount of the gross proceeds of sale; and
- (b) the amount of the costs and expenses of, and incidental, to the sale; and
- (c) the balance owing by the secured party to the debtor, or by the debtor to the secured party, as the case may be.

97 Secured party must pay prior ranking secured parties

- (1) A secured party who sells collateral under section 89 must first apply the net proceeds to the claims of prior ranking secured parties before applying the net proceeds to the seller's own claim.
- (2) The seller must pay the claims of prior ranking secured parties in the order of their priority as determined by Part 3.
- (3) The persons who must be paid under subsection (1) are entitled to recover the amount that must be paid from the seller.
- (4) In this section, **net proceeds** has the same meaning as in clause 5(2) of Schedule 1.

*Distribution of surplus***98 Distribution of surplus**

- (1) A secured party who has applied or sold collateral under section 88 or 89 must distribute the surplus by paying the claims of the following persons in the following order—
 - (a) subsequent ranking secured parties, in the order of priority as determined by Part 3;
 - (b) any other person (**P**) who has given the secured party notice that P claims an interest in the collateral and in respect of which the secured party is satisfied that P has a legally enforceable interest;
 - (c) the debtor.
- (2) Subsection (1) applies despite the extinguishment of a security interest under section 95.
- (3) The persons who must be paid under subsection (1) are entitled to recover the amount that must be paid from the seller.

99 Secured party may pay surplus into Court

- (1) The secured party may pay the surplus into the Court if there is a question as to who is entitled to receive payment under section 98.
- (2) The surplus may only be paid out on an application by a person claiming an entitlement to the surplus.

*Retention of collateral by secured party***100 Secured party may retain collateral**

A secured party may retain the collateral in satisfaction of the obligation secured by it if—

- (a) the debtor is in default under the security agreement; and
- (b) the secured party has priority over all other secured parties; and
- (c) no objection is made after notice is given under section 101.

101 Secured party must give notice of proposal to retain collateral

- (1) A secured party who proposes to retain the collateral must give a notice (a **retention notice**) of the proposal to the persons listed in section 94(2).
- (2) A recipient of a retention notice whose security interest would be adversely affected by retention may object to the proposal within 10 working days after receiving it.
- (3) The secured party must sell the collateral if an objection under subsection (2) is made.
- (4) However, the secured party may—
 - (a) request a person (other than the debtor) who objects to provide proof of that person's interest; and
 - (b) ignore the objection if proof of interest is not provided within 10 working days after the request is made.

102 Effect of lack of objection

- (1) This section applies if a secured party has given a retention notice under section 101 and no objection has been made within the period for objecting (the **objection period**).
- (2) On expiry of the objection period,—
 - (a) the secured party is treated as having irrevocably elected to take the collateral in satisfaction of the obligation secured by it; and
 - (b) the secured party is entitled to hold or dispose of the collateral free from all rights and interests of the debtor and any other person listed in section 94(2); and
 - (c) all security interests subordinate to the secured party's security interest are extinguished.

Disposal of collateral to purchaser for value and in good faith

103 Effect of disposal of collateral to purchaser for value and in good faith

- (1) A purchaser for value and in good faith who acquires collateral sold by a secured party takes the collateral free from—
 - (a) the interest of the debtor; and
 - (b) any interest subordinate to that of the debtor; and
 - (c) any interest subordinate to that of the secured party.
- (2) Subsection (1) applies whether or not—
 - (a) the secured party has complied with section 101 (Secured party must give notice of proposal to retain collateral); and
 - (b) registrations relating to security interests that are subordinate to the security interest of the secured party selling the collateral have been removed from the register.

Subpart 3—Enforcement of security interests in accessions and fixtures

104 Meaning of other property

For the purposes of this subpart, **other property** means—

- (a) in relation to an accession, that part of the whole other than the accession:
- (b) in relation to a fixture, the real property to which the fixture is or has been affixed.

105 Secured party must not damage other property

A secured party who is entitled to take possession of an accession or fixture must remove the accession or fixture in a manner that—

- (a) causes no greater damage to the other property than is necessarily incidental to the removal; and
- (b) puts the person in possession of the other property to no greater inconvenience than is necessarily incidental to the removal.

106 Liability for damage caused by removal

- (1) This section applies if a secured party causes damage to other property in removing an accession or a fixture.
- (2) The secured party must reimburse a person (other than the debtor) for the damage caused if that person has an interest in the other property at the time the goods removed become an accession or fixture.
- (3) A person entitled to reimbursement may refuse permission to remove an accession or a fixture until the secured party has given adequate security for reimbursement.
- (4) Reimbursement under this section does not include reimbursement for a reduction in the value of the other property caused by—
 - (a) absence of the accession or fixture; or
 - (b) the necessity of replacing the accession or fixture.
- (5) On the application of a secured party, the Court may make an order—
 - (a) determining who is entitled to reimbursement under this section:
 - (b) determining the amount and kind of security to provided by the secured party under subsection (3):
 - (c) prescribing the depository for security under subsection (3):
 - (d) dispensing with the need for the permission of any or all of the persons entitled to reimbursement.

107 Secured party must give notice of removal of accession or fixture

- (1) A secured party who is entitled to remove an accession or fixture from the other property must give notice of the secured party's intention to remove to the following persons—
 - (a) any person who is known by the secured party to have an interest in the other property:
 - (b) any person who has registered a finance notice in the name of the debtor and referring to the other property:

- (c) any person who has registered a finance notice containing the serial number of the other property as required or authorised by this Act or by regulations.
- (2) The notice must—
- (a) be given not less than 5 working days before the removal of the accession or fixture; and
 - (b) contain the following—
 - (i) the secured party's name, address, and contact details (including email address);
 - (ii) a description of the goods to be removed;
 - (iii) a description of the other property;
 - (iv) the amount due to the secured party;
 - (v) the value of the accession or fixture if removed from the other property;
 - (vi) a statement of intention to remove the accession or fixture, unless the lesser of the amount secured or the value of the accession or fixture is paid on or before a specified date that is not less than 10 working days after the notice is given.
- (3) This section does not apply if—
- (a) there are reasonable grounds for believing that immediate removal is necessary (for example, because the collateral will substantially decline in value, or the cost of care and storage is disproportionate to its value); or
 - (b) for any other reason, the Court on an *ex parte* application is satisfied that a notice is not required.

108 When person with interest may retain accession or fixture

A person (other than the debtor) who has an interest in the other property that under this Act is subordinate to a security interest in an accession or a fixture may retain the accession or fixture on payment, to the secured party with a security interest that has priority over all other security interests in the accession or fixture, of the lesser of—

- (a) the amount due to the secured party; or
- (b) the value of the accession or fixture if it were removed from the other property.

109 Court may make order concerning removal of accession or fixture

On the application of a person entitled to receive a notice under section 107(1) (Secured party must give notice of removal of accession or fixture), the Court may make an order—

- (a) postponing the removal of the accession or fixture;
- (b) determining the amount payable to the secured party under section 108 for the retention of the accession or fixture.

Subpart 4—Redemption, reinstatement, and accounting

110 Entitled persons may redeem collateral

- (1) A person (an **entitled person**) who is entitled to receive a notice under section 94(2) may redeem collateral in accordance with subsection (2) at any time before the secured party sells it or is treated as having taken the collateral in satisfaction of the obligation secured by it.
- (2) An entitled person may redeem the collateral by—
 - (a) tendering fulfilment of the obligations secured by it; and
 - (b) paying the following expenses incurred by the secured party—
 - (i) reasonable pre-sale expenses; and
 - (ii) any other reasonable expenses incurred in enforcing the security agreement.
- (3) Subsection (1) does not apply if the entitled person agrees in writing after default not to redeem.
- (4) The debtor's right to redeem the collateral has priority over any other person's right to redeem it.
- (5) In this section and section 111, **pre-sale expenses** means the expenses of seizing, repossessing, holding, repairing, processing, and preparing the collateral for sale.

111 Debtor may reinstate security agreement

- (1) A debtor in default may reinstate the security agreement in accordance with subsection (2) at any time before the secured party sells the collateral or is treated as having taken the collateral in satisfaction of the obligation secured by it.
- (2) The debtor may reinstate the security agreement by—
 - (a) paying the sums actually in arrears, exclusive of the operation of an acceleration clause in the security agreement; and
 - (b) remedying any other default by reason of which the secured party intends to sell the collateral; and
 - (c) paying the following expenses incurred by the secured party—
 - (i) reasonable pre-sale expenses; and
 - (ii) any other reasonable expenses incurred in enforcing the security agreement.
- (3) Subsection (1) does not apply—
 - (a) if the debtor agrees in writing after default not to reinstate;
 - (b) to any security agreement made or entered into before the commencement of this Act.

112 Limit on reinstatement of security agreement

Unless otherwise agreed, the debtor is not entitled to reinstate a security agreement—

- (a) more than once, if the security agreement provides for payment in full by the debtor not later than 12 months after the day on which value was given by the secured party; or

- (b) more than once in each year, if the security agreement provides for payment by the debtor during a period greater than 1 year after the day on which value was given by the secured party.

113 Debtor may require accounting or statement of account

- (1) A debtor may by written notice to a secured party require —
 - (a) an accounting of the unpaid obligations secured by collateral; or
 - (b) that the secured party approve or correct a list of what the debtor believes to be the collateral securing an obligation; or
 - (c) that the secured party approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as at a specified date.
- (2) A secured party must comply with a notice given under subsection (1) within 10 working days after receiving the notice.
- (3) A secured party must not charge a fee for processing a notice given under subsection (1) except that if, in any 3 month period, a debtor gives more than 1 notice, the secured party may charge a reasonable fee for processing each additional notice.

Part 5

General and miscellaneous provisions

Subpart 1—Notices

114 How notices may be given

- (1) Subject to subsection (2), a notice or other document required or permitted to be sent or given under this Act to any person is taken to be sent or given—
 - (a) in the case of a natural person who is a debtor, when the notice or document is—
 - (i) delivered to the debtor; or
 - (ii) posted by registered or tracked post to the debtor's last known postal address; or
 - (iii) sent or given in accordance with the security agreement:
 - (b) in the case of a secured party who is named in a registrable notice that has been registered, when the notice or document to be sent or given is—
 - (i) delivered to the secured party; or
 - (ii) posted by registered post to the address given in the registrable notice; or
 - (iii) sent or given in accordance with the security agreement:
 - (c) in the case of a person who has requested the notice or document, when it is—
 - (i) delivered to the person; or
 - (ii) posted by registered or tracked post to the address given in the request; or
 - (iii) sent or given by an agreed method:

- (d) in the case of a notice to be sent or given to a company, when it is—
 - (i) posted to the company's registered office; or
 - (ii) sent or given by a method provided for notice to a company under clause 2 of Schedule 15 to the Companies Act 2017;
- (e) in the case of any other person, when it is—
 - (i) delivered to that person; or
 - (ii) sent or given in accordance with the security agreement.
- (2) Any notice sent or given by the Registrar notice may be sent or given by electronic mail, and in any other case a notice may be sent or given by electronic mail if the recipient has authorised the use of electronic mail as a means of communication.

Subpart 2—Offences

115 Offence of filing registrable notice with malicious or fraudulent intent

- (1) A person commits an offence who files a registrable notice under this Act—
 - (a) with malicious or fraudulent intent; or
 - (b) knowing that the notice is false in a material particular.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$4,000, or to imprisonment for a term not exceeding 3 months, or both.

116 Offence of destroying, etc data and other records

- (1) A person commits an offence who wilfully and without proper authority destroys, removes, alters, or tampers with any of the following—
 - (a) a registrable notice;
 - (b) data contained in a registrable notice;
 - (c) data contained in the register;
 - (d) any other data, document, or record held by the Registrar for the purposes of this Act.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$4,000, or to imprisonment for a term not exceeding 3 months, or both.

117 Offence of obstructing secured party's possession of collateral

- (1) A person commits an offence who wilfully obstructs a secured party or the agent of a secured party from taking possession of collateral in the exercise of a lawful power.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$4,000, or to imprisonment for a term not exceeding 3 months, or both.

118 Offence of concealing or altering collateral with intent to defraud

- (1) A person commits an offence who conceals, disguises, or alters collateral with intent to—
 - (a) defraud a secured party of the ability to enforce a security interest; or
 - (b) otherwise prevent a secured party from enforcing a security interest.

- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$4,000, or to imprisonment for a term not exceeding 3 months, or both.

Subpart 3—Regulations

119 Regulations

- (1) The Queen's Representative may, by Order in Executive Council, make regulations for all or any of the following purposes—
- (a) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of the register and its operation:
 - (b) prescribing matters for which fees are payable under this Act and the amounts of those fees:
 - (c) prescribing procedures for the payment of fees:
 - (d) prescribing grounds for an exemption from fees, in whole or in part:
 - (e) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of any registrations under this Act, including prescribing—
 - (i) the description of collateral, including proceeds collateral, that is to be included in a registrable notice:
 - (ii) the kinds of goods that may or must be described by serial number:
 - (iii) the requirement of a description by serial number:
 - (iv) the abbreviations, expansions, or symbols that may be used in registrable notices or other data authorised by this Act or the regulations to be entered in the register to effect registration:
 - (v) the manner of registering registrable notices:
 - (f) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of registrations of transitional notices under this Act:
 - (g) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of searching the register, including prescribing—
 - (i) criteria on which a search may be conducted:
 - (ii) the method of disclosure:
 - (iii) the form of search results:
 - (iv) the abbreviations, expansions, or symbols that may be used in search results:
 - (h) prescribing forms for the purposes of this Act:
 - (i) prescribing the information that must be provided for the proper completion of a prescribed form:
 - (j) prescribing procedures, requirements, and other matters, not inconsistent with is Act, in respect of registrable and other notices under this Act, including prescribing—
 - (i) the matters in which notices are required under this Act:
 - (ii) the form of notices under this Act:
 - (k) prescribing the requirements for a signature by electronic means:

- (l) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.
- (2) Without limiting subsection (1)(h), a provision of this Act requiring or contemplating prescribed information for the purposes of completing a prescribed form is satisfied if the information necessary for the proper completion of the form appears from the face of the form or from the content of the form.

120 Regulations relating to transitional matters

The Queen's Representative may, by Order in Executive Council, make regulations for all or any of the following purposes—

- (a) providing transitional, consequential, and savings provisions relating to the coming into force of this Act, which may be in addition to, or in place of, or which may amend, any transitional, consequential, and savings provisions in Schedule 4:
- (b) to facilitate the bringing into force of any regulations under this Act:
- (c) providing that subject to such conditions as are specified in the regulations, during a specified transitional period, specified provisions of this Act (including definitions) do not apply:
- (d) providing for any other matters necessary for facilitating or ensuring an orderly transition from any enactments replaced by this Act to the provisions of this Act.

Subpart 4—Miscellaneous

121 Conflict of laws rules

The rules set out in Schedule 3 apply to situations of conflict of laws in relation to security interests.

122 Transitional provisions

The transitional provisions set out in Schedule 4 apply on the commencement of this Act.

123 Repeals and revocations

- (1) The following Acts are repealed—

- (a) Chattels Transfer Act 1924:
- (b) Hire Purchase Act 1986.

- (2) The Chattels Transfer (Fees) Regulations are revoked:

Schedule 1 Interpretation

1. Interpretation

(1) In this Act, unless the context otherwise requires,—

accessions means goods that are installed in, or affixed to, other goods

account debtor means a person who is obligated under an account receivable, a secured sales contract, an intangible, or chattel paper

account receivable means a monetary obligation that is not evidenced by a chattel paper, an investment security, or by a negotiable instrument, whether or not that obligation has been 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 debtor in connection with an advance or the enforcement of a security interest securing the advance

after-acquired property means personal property that a debtor acquires after the security agreement is made

as-extracted collateral means—

- (a) minerals (including petroleum and gas) subject to a security interest that—
 - (i) is created by a debtor having an interest in the minerals before extraction; and
 - (ii) attaches to the minerals as they are extracted; or
- (b) accounts receivable that—
 - (i) arise out of the sale at the minehead or wellhead of minerals (including petroleum and gas); and
 - (ii) are subject to a security interest that—
 - (A) is created by a debtor having an interest in the minerals before extraction; and
 - (B) attaches to the accounts receivable on the sale of the minerals

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

building means a structure, erection, mine, or work that is built or constructed on or opened in land

building materials—

- (a) means materials that are incorporated into a building; and
- (b) includes goods attached to a building so that their removal—
 - (i) would necessarily involve the dislocation or destruction of some other part of the building and cause substantial damage to the damage apart from the loss of value to the building as a result of the removal; or

- (ii) would result in weakening the structure of the building or exposing the building to weather damage or deterioration; but
- (c) does not include—
 - (i) heating, air conditioning, or conveyancing devices; or
 - (ii) machinery installed in a building or on land for use in carrying on an activity in the building or on the land

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

chattel paper means 1 or more writings that evidence both a monetary obligation and a security interest in, or lease of, specific goods or specific goods and accessions

collateral means present and future personal property that is subject to a security interest

commercial consignment—

- (a) means a consignment where—
 - (i) a consignor has reserved an interest in the goods that the consignor has delivered for the purpose of sale, lease, or other disposition; and
 - (ii) both the consignor and the consignee deal in the ordinary course of business in goods of that description; but
- (b) does not include an agreement under which goods are delivered to a auctioneer for the purpose of sale

consumer goods—

- (a) means goods that are used or acquired primarily for personal, family, or household purposes; but
- (b) does not include licensed motor vehicles

Court means the High Court of the Cook Islands

crops means crops, whether matured or otherwise, and whether naturally grown or planted, attached to land by roots or forming part of a tree or plant attached to land; but does not include trees

debtor—

- (a) means—
 - (i) a person who owes payment or performance of an obligation secured, whether or not that person owns or has other rights in the collateral; or
 - (ii) a person who receives goods from another person under a commercial consignment; or
 - (iii) a lessee under a lease for a term of more than 1 year; or
 - (iv) a transferor of an account receivable or chattel paper; or
 - (v) a transferor or successor to the interest of a person referred to in subparagraphs (i) to (iv); or
- (b) includes a trustee for any person referred to in paragraph (a)

default means—

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

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

document means a document in any form; and includes—

- (a) any writing on any material; and
- (b) information recorded or stored on, and capable of transmission to or from, a computer or other device; and material subsequently derived from information so recorded, stored, or transmitted; and
- (c) a book, graph, or drawing; and
- (d) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable of being produced by any means

document of title means a writing issued by 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

electronic signature means a signature by electronic means that—

- (a) adequately identifies the signatory and adequately indicates the signatory's approval of the information to which the signature relates; and
- (b) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required

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

execution creditor means a person who—

- (a) causes or may cause personal property to be seized under legal process to enforce a judgment or legal obligation, including execution, attachment, or garnishment; or
- (b) has obtained or may obtain a charging order or equitable execution that affects or relates to personal property

fixtures—

- (a) means goods that are fixed or intended to become fixed to real property in a manner that causes a property right to arise in the goods; and
- (b) includes solar panels and water tanks; but
- (c) does not include—
 - (i) goods that are building materials incorporated in a building or other structure attached to the land; or
 - (ii) readily removable factory machines, office machines, or domestic appliances

future advance—

- (a) means the payment of money, the provision of credit, or the giving of value secured by a security interest occurring after the security agreement has been signed or assented to in writing, whether or not provided or given under an obligation; and

- (b) includes advances, reasonable costs incurred, and expenditures made for the protection, maintenance, preservation, or repair of the collateral, or for the enforcement of the security interest

goods—

- (a) means tangible personal property; and
- (b) includes crops, the unborn young of animals, trees that have been severed, and minerals (including petroleum and gas) that have been extracted; but
- (c) does not include chattel paper, a document of title, a negotiable instrument, an investment security, or money

intangible means personal property other than chattel paper, a document of title, goods, an investment security, money, or a negotiable instrument

inventory means goods that are—

- (a) held by a person for sale or lease, or that have been leased by that person as lessor; or
- (b) to be provided or have been provided under a contract for services; or
- (c) raw materials or work in progress; or
- (d) materials used or consumed in a business

investment security means a security, security entitlement, securities account, futures contract, or futures account

knowledge has the meaning set out in clause 4 of this schedule

lease for a term of more than 1 year—

- (a) means a lease or bailment of goods for a term of more than 1 year; and
- (b) includes—
 - (i) a lease for an indefinite term; and
 - (ii) a renewable lease for a term of 1 year or less, where the total of the terms, including the original term, may exceed 1 year; and
 - (iii) a lease for a term of 1 year or less, where the lessee, with the lessor's consent, retains uninterrupted or substantially uninterrupted possession of the leased goods for a period of more than 1 year after the lessee first acquired possession of them, but the lease does not become a lease for a term of more than 1 year until the lessee's possession extends for more than 1 year; but
- (c) does not include—
 - (i) a lease by a lessor who is not regularly engaged in the business of leasing goods; or
 - (ii) a lease of household furnishings or appliances as part of a lease of land where the use of the goods is incidental to the use and enjoyment of the land; or
 - (iii) a lease of prescribed goods, regardless of the length of the lease term

money means currency authorised as a medium of exchange by the law of the Cook Islands or of any other country

negotiable instrument—

- (a) means—
 - (i) a bill of exchange or promissory note; or

- (ii) any other writing that evidences a right of 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; or
 - (iii) a letter of credit, if the letter of credit states on it that it must be presented on claiming payment; but
- (b) does not include chattel paper, a document of title, or an investment security

new value means value other than antecedent debt or liability

non-purchase money security interest means a security interest that is not a purchase money security interest

obligation secured means, when determining the amount payable under a lease that secures payment or performance of an obligation,—

- (a) the amount originally contracted to be paid under the lease; and
- (b) any other amount payable under the terms of the lease; and
- (c) any other amount required to be paid by the lessee to obtain ownership of the collateral

organisation means any body or organisation, whether incorporated or unincorporated

other goods means goods in which an accession is installed or to which an accession is affixed

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

personal property includes chattel paper, documents of title, goods, intangibles, inventory, investment securities, money, and negotiable instruments

prescribed means prescribed by regulations made under this Act

proceeds—

- (a) means identifiable or traceable property—
 - (i) that is derived directly or indirectly from a dealing with collateral or the proceeds of collateral; and
 - (ii) in which the debtor acquires an interest; and
- (b) includes—
 - (i) a right to an insurance payment or other payment as indemnity or compensation for loss of or damage to the collateral or proceeds; and
 - (ii) a payment made in total or partial discharge or redemption of chattel paper, an intangible or investment security, or a negotiable instrument; but
- (c) does not include animals merely because they are the offspring of the animals that are collateral

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

purchase money security interest—

- (a) means—

- (i) a security interest taken in collateral by a seller to the extent that it secures the obligation to pay all or part of the collateral's purchase price; or
- (ii) a security interest taken in collateral by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights; or
- (iii) the interest of a lessor of goods under a lease for a term of more than 1 year; or
- (iv) the interest of a consignor who delivers goods to a consignee under a commercial consignment; but
- (b) does not include a transaction of sale and lease back to the seller

purchase price and value, in relation to a purchase money security interest, include credit charges and interest payable for the purchase of a loan credit

purchaser means a person who purchases personal property

register means the register of personal property securities established under section 64(1)

registrable notice means a notice listed in section 68

Registrar means the Registrar of Personal Property Securities appointed in accordance with section 62

regulations means regulations made under this Act

secured party—

- (a) means a person who holds a security interest for that person's own benefit or for the benefit of another person; and
- (b) includes a trustee where the holders of the obligations issued, guaranteed, or provided for under a security agreement are represented by a trustee as the holder of the security interest

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 means—

- (a) a writing (whether or not in the form of a security certificate) that is recognised in the place in which it is issued or dealt with as evidencing a share, warrant, option, right to participate, derivative, or other interest in property or an enterprise, or that evidences an obligation of the issuer, and that, in the ordinary course of business, is transferred by—
 - (i) delivery with any necessary endorsement, assignment, or registration in the records of the issuer or the issuer's agent; or
 - (ii) an entry in the records of a clearing house or securities depository; or
 - (iii) an entry in the records maintained for that purpose by or on behalf of an issuer or its nominee; but
- (b) does not include a writing that evidences a monetary obligation secured by land

security agreement means an agreement described in section 8

security interest has the meaning given to it in clause 2 of this schedule

security trust deed means a deed or other document by the terms of which a person issues or guarantees, or provides for the issue or guarantee of, debt obligations secured by a security interest, and in which another person is appointed as trustee for the holders of the debt obligations

serial number, in relation to a motor vehicle (including a truck or other commercial vehicle), means any number or letter, or any combination of numbers or letters, shown on the body of a motor vehicle

sign includes sign by means of an electronic signature

value—

- (a) means consideration that is sufficient to support a simple contract; and
- (b) includes an antecedent debt or liability

whole means an accession and the goods in which the accession is installed or to which the accession is affixed

working day means a day that is not—

- (a) a Saturday or a Sunday; or
- (b) a day that is defined as, or declared to be, a public holiday under any Act

writing includes—

- (a) the recording of words in a permanent and legible form; and
- (b) the recording of words by electronic means that can be retrieved and read; and
- (c) the display of words by any form of electronic or other means of communication that is subsequently recorded by electronic means that can, by any means, be retrieved and read.

- (2) For the purposes of this Act, the determination of whether goods are consumer goods, equipment, or inventory must be made at the time when the security interest in the goods attached, unless otherwise provided in this Act.

2. Meaning of security interest

- (1) In this Act, unless the context otherwise requires, **security interest**—

- (a) means an interest in personal property created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to—
 - (i) the form of the transaction; or
 - (ii) the identity of the person who has title to the collateral; and
- (b) includes an interest created or provided for by a transfer of an account receivable or chattel paper, a lease for a term of more than 1 year, and a commercial consignment (whether or not the transfer, lease, or consignment secures payment or performance of an obligation).

- (2) A person who is obligated under an account receivable may take a security interest in the account receivable under which that person is obligated.
- (3) Without limiting subsection (1), and to avoid doubt, this Act applies to a fixed charge, floating charge, chattel mortgage, conditional sale agreement (including an agreement to sell subject to retention of title), hire purchase agreement, pledge, security trust deed, trust receipt, consignment, lease, an assignment, or a flawed asset arrangement, that secures payment or performance of an obligation.

3. Meaning of possession in certain cases

- (1) For the purposes of this Act, a person (**P**) takes possession of an investment security if,—
- (a) in the case of an investment security that is evidenced by a security certificate, P takes physical possession of that certificate; or
 - (b) in the case of an investment security that is traded or settled through a clearing house or securities depository, the clearing house or the securities depository, as the case may be, records P's interest in the investment security; or
 - (c) in the case of an investment security to which neither paragraph (a) or (b) applies, the records maintained by the issuer or on the issuer's behalf record P's interest in the investment security; or
 - (d) in the case of an investment security that is held by a nominee, the records maintained by the nominee record P's interest in the investment security.
- (2) For the purposes of this Act, a person (**P**) takes possession of a negotiable instrument if—
- (a) P takes physical possession of the instrument; or
 - (b) in the case of a negotiable instrument that is traded or settled through a clearing house or securities depository, the clearing house or the securities depository, as the case may be, records P's interest in the negotiable instrument.
- (3) For the purposes of this Act, a secured party is not in possession of collateral that is in the actual or apparent possession of the debtor or the debtor's agent.

4. Meaning of knowledge

- (1) For the purposes of this Act,—
- (a) an individual knows or has knowledge of a fact in relation to a particular transaction when that person has actual knowledge of the fact or receives a notice stating the fact;
 - (b) an organisation knows or has knowledge of a fact in relation to a particular transaction when—
 - (i) the person within the organisation with responsibility for matters to which the transaction relates has actual knowledge of the fact; or
 - (ii) the organisation receives a notice stating the fact; or
 - (iii) the fact is communicated to the organisation in such a way that it would have been brought to the attention of the person with responsibility for matters to which the transaction relates if the organisation had exercised reasonable care;
 - (c) a Government department knows or has knowledge of a fact in relation to a particular transaction when that fact has been brought to the attention of a senior employee of the Government department with responsibility for the matters to which the fact relates, under circumstances in which a reasonable person would take cognisance of it.
- (2) Registration of a finance notice is not constructive knowledge of its existence or contents to any person.

5. Meaning of surplus

- (1) For the purposes of Part 5, there is a **surplus** if—
- (a) a secured party has applied or sold the collateral; and
 - (b) the value of the collateral or the net proceeds of sale exceeds—
 - (i) the amount of the debt owed to the secured party by the debtor (where the collateral secures payment); or
 - (ii) the monetary value of the obligation owed to the secured party (where the collateral secures payment of an obligation).
- (2) In subclause (1)(b), **net proceeds** means net proceeds of sale after deducting—
- (a) the amounts that must be paid under section 99 (Secured party must pay prior ranking parties), if any; and
 - (b) the secured party's reasonable costs and expenses of, and incidental to, the process of sale (which includes taking possession of the collateral, holding, storing, repairing, maintaining, or valuing it, and preparing it for sale).

6. Meaning of control of deposit account

For the purposes of section 20(d), a secured party has control of a deposit account if—

- (a) the secured party is the financial institution with which the deposit account is maintained, even if the debtor retains the right to direct the disposition of funds from the deposit account; or
- (b) the debtor, secured party, and financial institution have agreed by a signed writing that the financial institution will comply with instructions originated by the secured party directing the disposition of funds from the deposit account without the further consent of the debtor; or
- (c) the secured party becomes the financial institution's customer with respect to the deposit account.

Schedule 2

Transactions to which Act does not apply

1. When Act does not apply

- (1) This Act does not apply to—
- (a) the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of an agent of the seller, unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods;
 - (b) a lien or a charge or other interest in personal property created by any other Act or by operation of any rule of law except—
 - (i) as provided by section 36 or 37;
 - (ii) a charge or other interest in personal property created under Cook Islands tax legislation;
 - (c) any right of set off, netting, or combination of accounts.
- (2) This Act does not apply to an interest created or provided for by any of the following transactions—
- (a) the creation or transfer of an interest in land;
 - (b) a transfer of a right to payment that arises in connection with an interest in land, including a transfer of rental payments payable under a lease of or licence to occupy land, unless the right to payment is evidenced by an investment security;
 - (c) a transfer of an unearned right to payment under a contract made to a person who is to perform the transferor's obligation under the contract;
 - (d) a transfer of present or future wages, salary, pay, commission, or any other compensation for labour or personal services of an employee;
 - (e) an assignment for the general benefit of the creditors of the assignor;
 - (f) a transfer of an interest or claim in or under a contract of annuity or policy of insurance, except as provided by this Act with respect to proceeds and priorities in proceeds;
 - (g) a transfer of a right to damages in tort;
 - (h) an assignment of accounts receivable solely to facilitate the collection of the accounts receivable on behalf of the assignor;
 - (i) an assignment of a single account receivable or negotiable instrument in whole or in partial satisfaction of a pre-existing indebtedness;
 - (j) a sale of accounts receivable or chattel paper as part of a sale of a business, unless the seller remains in apparent control of the business after sale;
 - (k) a transfer, assignment, mortgage, or assignment of a mortgage of a vessel or aircraft that must be registered under the Shipping Act 1998 or the Civil Aviation Act 2002 respectively;
 - (l) an interest in fishing quota as established by any other law that governs the taking of fish from the Cook Islands waters.
- (3) This Act does not apply to an interest created or provided for by any of the following transactions—

- (a) a transfer of an interest in a superannuation fund:
- (b) the creation or transfer of an interest governed by any other law relating to mining:
- (c) the creation or transfer of an interest governed by any other law relating to the extraction of oil or gas from subsurface areas.

Schedule 3

Conflicts of laws rules

1. When Cook Islands law applies

- (1) Except as otherwise provided by this Act, in the situations set out in subclause (2) the law of the Cook Islands governs the validity, perfection, and the effect of perfection or non-perfection of—
 - (a) a security interest in goods; or
 - (b) a possessory security interest in chattel paper, an investment security, money, a negotiable document of title, or a negotiable instrument.
- (2) Cook Islands law applies if—
 - (a) at the time the security interest attaches to the collateral, the collateral is situated in the Cook Islands; or
 - (b) at the time the security interest attaches to the collateral, the collateral is situated outside the Cook Islands but the secured party has knowledge that it is intended to move the collateral to the Cook Islands; or
 - (c) the security agreement provides that Cook Islands law is the law governing the transaction; or
 - (d) in any other case, Cook Islands law applies.
- (3) For the purposes of subclause (2), an investment security that is not in the form of a security certificate is situated where the records of the clearing house or securities depository are kept.

2. Continuity of perfection where goods moved to Cook Islands

- (1) This clause applies if—
 - (a) a security interest attaches to goods situated in another jurisdiction; and
 - (b) the security interest is perfected under the law of that jurisdiction; and
 - (c) the goods are subsequently moved to the Cook Islands.
- (2) The security interest continues to be perfected in the Cook Islands if it is perfected in the Cook Islands by the earliest of the following—
 - (a) not later than 60 working days after the day on which the goods are brought into the Cook Islands; or
 - (b) not later than 15 working days after the day on which the secured party has knowledge that the goods have been brought into the Cook Islands; or
 - (c) before perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached.
- (3) A security interest that is not perfected as provided in subclause (2) may be otherwise perfected in the Cook Islands under this Act.

3. Temporary perfection where collateral moved to Cook Islands

- (1) Subclause (2) applies if—
 - (a) a security interest attaches to collateral situated in another jurisdiction; and

- (b) the security interest is not perfected under the law of that jurisdiction; and
 - (c) the collateral is subsequently moved to the Cook Islands.
- (2) The security interest is temporarily perfected until the expiry of 30 working days after the collateral was brought into the Cook Islands.
- (3) If a security interest referred to in clause 1 (When Cook Islands law applies) is not perfected under the law of the jurisdiction in which the collateral was situated when the security interest attached and before the collateral was brought into the Cook Islands, it may be perfected under this Act.

4. Location of debtor for purposes of clauses 5 to 8

For the purposes of clauses 5 to 8,—

- (a) a debtor that is a body corporate is located in the country of incorporation; and
- (b) a debtor that is not a body corporate is located at—
 - (i) the debtor's place of business; or
 - (ii) the debtor's principal place of business (if the debtor has more than 1 place of business); or
 - (iii) the debtor's principal residence (if the debtor has no place of business).

5. Validity and perfection of security interest in intangibles, movable equipment, etc

The validity, perfection, and effect of perfection or non-perfection of a security interest is governed by the law (including conflicts of law rules) of the jurisdiction where the debtor is located when the security interest attaches if the security interest is—

- (a) a security interest in an intangible; or
- (b) a security interest in goods that are of a kind that are normally used in more than 1 jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others; or
- (c) a non-possessory security interest in chattel paper, an investment security, a negotiable document of title, money or a negotiable instrument.

6. Position where debtor relocates to another jurisdiction, etc

If a debtor relocates to another jurisdiction or transfers an interest in the collateral to a person located in another jurisdiction, a security interest perfected in accordance with the law applicable, as provided in clause 5 (Validity and perfection of security interest in intangibles, movable equipment, etc), continues to be perfected in the Cook Islands if it is perfected in the other jurisdiction by the earliest of the following—

- (a) not later than 60 working days after the day on which the debtor relocates or transfers an interest in the collateral to a person located in the other jurisdiction; or
- (b) not later than 15 working days after the day on which the secured party has knowledge that the debtor has relocated or transferred an interest in the collateral to a person located in the other jurisdiction; or

- (c) prior to the day on which perfection ceases under the law of the first jurisdiction.

7. Position where no public record, etc of perfection of security interest

- (1) If the law governing the perfection of a security interest referred to in clause 5 or 6 does not provide for public registration or recording of a security interest or a notice relating to it, and the collateral is not in the possession of the secured party, the security interest is subordinate to—
 - (a) an account receivable that is payable in the Cook Islands; or
 - (b) an interest in goods, an investment security, a negotiable instrument, a negotiable document of title, money, or chattel paper, acquired when the collateral was situated in the Cook Islands.
- (2) Subclause (1) does not apply if the security interest is perfected under this Act before the interest referred to in subclause (1)(a) or (b) arises.
- (3) A security interest to which subclause (1) applies may be perfected under this Act.

8. Validity, perfection, etc of security interest in minerals

Despite clause 5 (Validity and perfection of security interest in intangibles, movable equipment, etc), the validity, perfection, and the effect of perfection or non-perfection of a security interest in as-extracted collateral is governed by the law of the jurisdiction in which the minehead or wellhead is located if the security interest is provided for in a security agreement entered into before the collateral is extracted.

Schedule 4

Transitional provisions

1. Interpretation

In this schedule,—

prior creditor means a person who has a prior interest

prior execution right means the right of an execution creditor where the right arose before the commencement of this Act

prior interest means a prior execution right or a prior security interest

prior law means the law that existed immediately before the commencement of this Act

prior registration law means an enactment or other law relating to the registration of personal property that has been repealed by this Act or the Companies Act 2016

prior security interest means a security interest that—

(a) is created or provided for by a security agreement or other transaction that—

(i) was made or entered into before the commencement of this Act; and

(ii) has not been terminated before that commencement date; and

(b) would otherwise fall within the scope of this Act

prior transaction means a transaction entered into that would otherwise fall within the scope of this Act

transitional notice means a notice of a prior interest

transitional period means the period of 180 days beginning on the day of the commencement of this Act.

2. Validity, effect, and enforcement of prior execution right or prior security interest

Except as provided by this Schedule, the validity, effect, and enforcement of a prior interest must be determined by the law in force when the prior interest arose.

3. Prior creditor may register prior interest under this Act

(1) A prior creditor may register a prior interest under this Act by filing a transitional notice with the Registrar in the same manner as a finance notice.

(2) A transitional notice may be filed—

(a) at any time;

(b) without the authorisation of the debtor.

4. Effect of registration within transitional period

A prior interest that is registered under this Act within the transitional period has priority over a security interest created under this Act, with priority determined from the date of commencement of this Act.

5. Effect of registration after transitional period

- (1) The priority of a prior interest that is registered under this Act after the expiry of the transitional period must be determined, as against a security interest created under this Act,—
- (a) according to the priority rules set out in Part 3; and
 - (b) by reference to the date of registration of the prior interest.
- (2) If no transitional notice is filed, whether during or after the transitional notice, a security interest perfected under this Act has priority over an unregistered prior interest.

6. Prior security interests continue to be enforceable against third parties during transitional period

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

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

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

8. Certain other prior security interests deemed to be perfected during transitional period

A prior security interest (other than a security interest to which clause 7 applies) is, during the transitional period, deemed to be perfected by registration under this Act if the prior security interest had (under the prior law and without the collateral relation to that prior security interest being taken into possession by the secured party) had priority over every other prior security interest (If any).

This Act is administered by the Ministry of Justice.

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