**SECURITY INTERESTS IN MOVABLE PROPERTY BILL**

**SECURITY INTERESTS IN MOVABLE PROPERTY BILL, 20 [ ]**

DRAFT

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**SAINT LUCIA**

**\_\_\_\_\_**

No. [ ] of 20 []

**A**

**Bill**

**entitled**

**AN ACT** to govern security interests in movable property, to provide for the establishment of a Registry of Security Interests in Movable Property and for related matters.

( )

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

**PRELIMINARY**

Short title and commencement

**1.** (1) This Act may be cited as the Security Interests in Movable Property Act, 20[ ].

(2) This Act shall come into force on a date to be fixed by the Minister by Order published in the *Gazette*.

Interpretation

**2.** In this Act ⎯

“acquisition secured creditor” means a secured creditor that has an acquisition security interest;

“acquisition security interest” means ⎯

1. a security interest in tangible property;
2. a security interest in intellectual property; or
3. a security interest in the rights of a licensee under a licence of intellectual property,

which secures an obligation to pay an unpaid portion of the purchase price of such property, or other credit extended to enable the grantor to acquire interests in such property to the extent that the credit is used for that purpose;

“Amendment notice” means a notice submitted to the Registry in the prescribed registry notice form to modify information contained in a related registered notice; “bank” has the meaning assigned to it under the Banking Act, Cap. 12.01;

“banking business” has the meaning assigned to it under section 2(1) of the Banking Act, Cap 12.01;

“business day” means a day from Monday to Friday, but does not include a bank holiday;

“Cancellation notice” means a notice submitted to the Registry in the prescribed registry notice form to cancel the effectiveness of the registration of all related registered notices;

“certificated non-intermediated securities” means non-intermediated securities represented by a certificate that ⎯

*(a)* provides that the person entitled to the securities is the person in possession of the certificate; or

*(b)* identifies the person entitled to the securities;

 “competing claimant” means a creditor of a grantor or another person with a right in an encumbered property that may be in competition with the right of a secured creditor in the same encumbered property; the term includes

*(i)* another secured creditor of the grantor that has a security interest in the same encumbered property,

*(ii)* another creditor of the grantor that has an interest in the same encumbered property,

*(iii)* the insolvency representative in insolvency proceedings under the *Bankruptcy and Insolvency Act [Cap]* in respect of the grantor, and

*(iv)* a buyer or other transferee, lessee or licensee of the encumbered property;

“consumer goods” means goods primarily used or intended to be used by the grantor for household purposes;

“control agreement” with respect to a right to payment of funds credited to a deposit account, means an agreement in writing between the financial institution, the grantor and the secured creditor, according to which the financial institution agrees to follow an instruction from the secured creditor with respect to the payment of such funds without further consent from the grantor;

“corporation” means a company formed or registered under the laws of Saint Lucia or an incorporated entity, wherever incorporated, that carries on business in Saint Lucia or that has property in Saint Lucia;

 “credit institution”

1. means –
	1. a business licensed under the Money Services Business Act, Cap. 12.22;
	2. a credit union registered under the Cooperative Societies Act, Cap. 12.06; or
	3. a licensed financial institution that engages in money-lending or the granting of credit facilities; and

(b) does not include a bank

“debtor” means a person that owes payment or other performance of a secured obligation, whether or not that person is the grantor of the security interest securing payment or other performance of that obligation, including a secondary obligor such as a guarantor of a secured obligation;

“debtor of a receivable” means a person that owes payment of a receivable that is subject to a security interest, and includes a secondary obligor such as a guarantor for a receivable;

“debtor of a trade receivable” means a person that owes payment of a trade receivable that is subject to a security interest, and includes a secondary obligor such as a guarantor for a receivable;

“default” means the failure of a debtor to pay or otherwise perform a secured obligation in accordance with its terms or an event that constitutes default under the terms of the security agreement;

“deposit account” means an account maintained by a financial institution to which funds may be credited or debited;

“document of title” means a document, such as a warehouse receipt or bill of lading, that embodies a right to delivery of tangible property and satisfies the requirements for negotiability;

“Eastern Caribbean Central Bank” means the bank established under Article 3 of the Agreement establishing the Eastern Caribbean Central Bank made on the 5th day of July, 1983 the text of which is set out in the Eastern Caribbean Central Bank Agreement Act, Cap. 19.07;

“encumbered property” means ⎯

*(a)* movable property that is subject to a security interest; and

*(b)* a receivable that is the subject of a transfer;

“equipment” means a tangible property other than inventory or consumer goods that is primarily used or intended to be used by the grantor in the operation of [its/his or her] business;

“financial institution” means a bank, a credit institution or other licensed financial institution;

“former law” means the law the law applicable to a former security interest in movable property immediately before the commencement date of this Act;

“former security interest” means a right created by an agreement entered into before the commencement date of this Act that is a security interest within the meaning of this Act and to which this Act would have applied if it had been in force when the right was created;

“future property” means movable property that does not exist or that the grantor does not have a right in or the power to encumber at the time the security agreement is concluded;

“grantor” means ⎯

*(a)* a person that creates a security interest to secure an obligation of that person or of another person;

*(b)* a buyer or other transferee, lessee, or licensee of an encumbered property that acquires a right subject to a security interest; and

*(c)* a transferor in a transfer of a receivable;

“Initial notice” means a notice submitted to the Registry in the prescribed registry notice form to achieve the third-party effectiveness of the security interest to which the notice relates;

“intangible property” ⎯

*(a)* means [all types of] movable property other than tangible property; and

[*(b)* includes a receivable*, chose in action*, deposit account, electronic securities and intellectual property rights;]

“intellectual property rights” means ⎯

*(a)* a copyright as defined under section 2(1) of the Copyright Act, Cap 13.07;

*(b)* a right to use a registered geographical indication under section 6 of the Geographical Indications Act, Cap 13.14;

*(c)* a right conferred by registration of an industrial design under section 5 of the Industrial Designs Act, Cap 13.29;

*(d)* a right conferred on a right holder as defined under section 2 of the Layout-Designs (Topographies) of Integrated Circuits Act, Cap 13.16;

*(e)* a trade mark as defined under section 2(1) of the Trade Marks Act, Cap 13.30; and

*(f)* another right related to a right under paragraphs *(a)* to *(e*). [ and

*(g)* a similar right created under the law of another State.]

“inventory” means tangible property held by the grantor for sale or lease in the ordinary course of the business of the grantor, including raw material and work in progress;

“judgement creditor” means a creditor that has obtained a lien in respect of movable property under a judgement or provisional order of the Court];

[“knowledge” means actual knowledge;]

“licensed financial institution” means

1. a bank licensed under the Banking Act, Cap. 12.01;
2. a credit union registered under the Cooperative Societies Act, Cap. 12.06;
3. an insurance company licensed under the Insurance Act, Cap. 12.08;
4. an international insurance company licensed under the International Insurance Act, Cap. 12.15;
5. an international bank registered under the International Banks Act, Cap. 12.17; or
6. any other financial institution licensed or registered in Saint Lucia or elsewhere.

“mass” means a tangible asset which results when a tangible asset is so commingled with one or more other tangible assets of the same kind that they have lost their separate identities;

“Minister” means the Minister responsible for [finance];

“money” means a bank note and coin issued by the Eastern Caribbean Central Bank and a note and coin authorised as legal tender by another country;

“movable property”

1. means tangible property or intangible property, and
2. does not include immovable property;

“negotiable instrument” means a bill of exchange, cheque and promissory note as defined in Commercial Code, Cap. 244 of the Revised Laws of Saint Lucia 1957;

“non-intermediated securities” means securities other than securities credited to a securities account and resulting rights;

“notice,” when not used as part of “initial notice,” “amendment notice,” and “cancellation notice,” means a communication in writing other than a communication registered or to be registered in the Registry;

“notification of a security interest in a receivable” means a notification by the grantor or the secured creditor under **section 75**, informing the debtor of the receivable that a security interest has been created in the receivable;

“person” means an individual, corporate or unincorporated body;

“possession” means the actual physical possession of tangible property by a person or the person’s representative, or by an independent person that acknowledges holding the tangible property for that person;

“priority” means the right of a person in encumbered property in preference to the right of a competing claimant;

“proceeds” means whatever is received in respect of encumbered property, including whatever is received as a result of sale or other transfer, lease, licence or collection of encumbered property, natural fruits, insurance proceeds, a claim arising from defects in, damage to or loss of encumbered property, and proceeds of such proceeds;

“product” means tangible property which results when ⎯

1. a tangible property is so physically associated or united with one or more other tangible properties of a different kind, that they have lost their separate identities or
2. one or more tangible properties are so manufactured, assembled or processed, that they have lost their separate identities;

“receivable” means a right to payment of a monetary obligation, but does not include a right to payment ⎯

1. evidenced by a negotiable instrument;
2. of funds credited to a deposit account; and
3. under a non-intermediated security;

“registration number” means a number assigned to an initial notice by the Registrar pursuant to clause 29;

“Registrar” means the Registrar of the High Court under the Supreme Court Act, Cap 2.01;

“Registry” means the Registry of Security Interests in Movable Property established under **clause 28;**

“Registry records” means the information in all registered notices stored by the Registrar, consisting of the records that are publicly accessible and the records that have been archived;

“secured creditor” means a person that has a security interest and includes a transferee in a transfer of a receivable;

“secured obligation” means an obligation secured by a security interest, excluding the interest of a transferee in a transfer of a receivable;

“securities” has the meaning given to the term in Securities Act, Cap. 12.18

“securities account” means an account maintained by an intermediary to which securities may be credited or debited;

“security agreement” means ⎯

1. an agreement, regardless of whether the parties have denominated it as a security agreement, between a grantor and a secured creditor that provides for the creation of a security interest; and
2. an agreement that provides for the transfer of a receivable;

“security interest” means ⎯

*(a)* a property interest in movable property, created under sections 6-17, that secures payment or other performance of an obligation or that is the [property] interest of a transferee in a transfer of a receivable, regardless of ⎯

*(i)* the form of agreement or transaction,

*(ii)* whether or not the parties have denominated the interest as a security interest,

*(iii)* the type of moveable property,

*(iv)* the status of the grantor or secured creditor, or

*(v)* the nature of the secured obligation

“signed” includes data in electronic form in, affixed to or logically associated with, an electronic communication, which may be used to identify the signatory in relation to the electronic communication and to indicate the approval of the signatory of the information contained in the electronic communication;

“tangible property,” except as provided in the next sentence, includes goods, money, a negotiable instrument, a document of title and certificated non-intermediated securities. In the definitions of “acquisition security interest,” “equipment,” “inventory,” “mass,” and “product,” and in sections 12, 21, 52, 53 and 55-59, the term refers only to goods;

“trade receivable” means a receivable ⎯

1. arising from a contract for ⎯
2. the supply or lease of goods or services other than financial services,
3. construction works,
4. the sale or lease of immovable property, or

*(iv)* the sale, lease or license of industrial or other intellectual property or of proprietary information, or

1. representing the payment obligation for a credit card transaction;

“transfer of a receivable” means the absolute or outright transfer by agreement from one person to another person of ownership of a receivable;

“uncertificated non-intermediated securities” means non-intermediated securities not represented by a certificate;

 “writing” includes an electronic communication if it contains information that is accessible so as to be usable for subsequent reference.

**Application and non-application of this act**

**3.** (1) Except as provided in section 4, this Act applies to ⎯

*(a)* a transaction, regardless of its form or the manner in which it is denominated by the parties, that creates a security interest in movable property, including ⎯

*(i)* a pledge, trust deed or trust receipt, debenture, and floating charge, and

*(ii)* conditional sale agreements and an agreement for the sale of goods on hire-purchase or by bill of sale under which title or ownership remains in the seller until the purchase price is paid; and

*(b)* a transfer of a receivable by agreement except when the transfer is a part of a sale of the business out of which the receivable arose.

(2) Notwithstanding subsection (1), this Act does not apply to ⎯

*(a)* a lien given under a law, except as provided in **section 33;**

*(b)* a trust arising under an enactment;

*(c)* a transfer of an interest or claim in or under a policy of insurance or a superannuation fund, except the transfer of a right to money or other value that is payable as indemnity or compensation for loss of, or damage to, encumbered property;

*(d)* the creation or transfer of an interest in immovable property (including a hypothec, charge or lease of immovable property), other than ⎯

*(i)* an interest in crops, or

*(ii)* an assignment of a right to payment under a hypothec, charge or lease, if the assignment does not convey or transfer the interest of the assignor in the immovable property;

*(e)* an assignment for the general benefit of the creditors;

*(f)* an assignment of accounts receivable made solely to facilitate the collection of accounts receivable for the assignor;

*(g)* an assignment of an unearned right to payment under a contract to an assignee who is to perform the obligations of the assignor under the contract;

*(h)* securities for which the Eastern Caribbean Central Bank acts as agent or depository under the Eastern Caribbean Central Bank Agreement Act, Cap.19.07 [or another enactment];

*(i)* securities held in the Eastern Caribbean Central Securities Depository Limited licensed under the Securities Act, Cap.12.18;

*(j)* a hypothec of a ship and a maritime lien; and

*(k)* the creation or transfer of an interest in present or future wages, salary, pay, commission or another compensation for labour or personal services, other than fees for professional services.

(3) This Act does not ⎯

*(a)* affect the right and obligation of the grantor and the secured creditor under a law governing the protection of parties to a transaction made for household purposes [or under the Consumer Protection Act, 2016 [No. 9 of 2016];

*(b)* override the provision of another law that limits ⎯

*(i)* the creation or enforcement of a security interest in a specific type of movable property; or

*(ii)* the transferability of a specific type of movable property [with the exception of a provision that limits the creation or enforcement of a security interest in, or the transferability of, movable property on the sole ground that it is a future movable property or a part or undivided interest in a movable property].

 (4) For the purposes of subsection (2)(i) and for the avoidance of doubt, nothing construed in this Act as to the priority, or an enforcement right, applicable to a security interest under this Act may be applied to, or enforced against, securities held through the Eastern Caribbean Central Securities Depository Limited licensed under the *Securities Act, Cap.12.18.*

(5) Where a conflict exists between this Act and any other statute or law of Saint Lucia, the provisions of this Act prevails.

**When provisions of Act may be varied by agreement of the parties**

**4.** (1) Except for **sections 5, 6, 9, 70, 71 87**, and 99-115, the provisions of this Act may be derogated from or varied by an agreementof the parties.

(2) An agreement referred to in subsection (1) does not affect the right or obligation of a person that is not a party to the agreement.

**Performance of obligations**

**5.** A person must, in the exercise of a right or performance of a duty, act in good faith [and in a commercially reasonable manner].

**PART I**

**SECURITY INTERESTS**

**Creation of a security interest**

**6.** A security interest in movable property is created when a security agreement satisfying the requirements of **sections 9 and 10** has been concluded**,** and the grantor has ⎯

*(a)* an interest in the property; or

*(b)* the power to encumber the property.

**Obligations that may be secured**

**7.** A security interest may secure any type of obligation, present or future, determined or determinable, conditional or unconditional, fixed or fluctuating.

**Movable property that may be encumbered**

**8.** A security interest may encumber any type of movable property, including ⎯

*(a)* parts of movable property and undivided interests in movable property;

*(b)* generic categories of movable property; and

*(c)* all the movable property of a grantor.

**Requirements for a security agreement**

**9.** (1) A security agreement must ⎯

*(a)* subject to subsection (2), be in writing and signed by the grantor,

*(b)* identify the secured creditor and the grantor;

*(c)* except in the case of an agreement that provides for the transfer of a receivable, describe the secured obligation; and

*(d)* describe the encumbered property as provided under **section 10.**

(2) A security agreement may ⎯

*(a)* be oral, if the secured creditor has possession of the encumbered property; and

***(b****)* provide for ─

***(i)*** the creation of a security interest in a future property and in such a case, the security interest in that property is created in accordance with **section 6** only at the time when the grantor acquires rights in it or the power to encumber it; and

*(ii)* the appointment, rights, and duties of a receiver.

**Description of encumbered property in security agreement**

**10** (1) The encumbered property must be described in the security agreement in a manner that reasonably allows its identification.

(2) If the description reasonably allows the identification of the encumbered property, the description need not be specific and need not identify each encumbered property individually.

(3) A description that indicates that the encumbered property consists of all the movable property of the grantor, or of all the movable property of the grantor within a generic category is in accordance with subsection (2).

**Security interest in identifiable proceeds**

**11.** (1) A security interest in an encumbered property extends to its proceeds that are identifiable as such.

(2) Subject to subsection (3), if proceeds in the form of funds credited to a deposit account or money have commingled with other property of the same kind, the security interest extends to the commingled property; the value of the security interest in the commingled property is limited to the value of the proceeds immediately before they were commingled.

(3)If after the commingling of funds credited to a deposit account or money, the value of the balance credited to the deposit account or of the commingled money is less than the value of the proceeds immediately before they were commingled, the value of the security interest in the commingled property is limited to the lowest value of the balance credited to the deposit account or of the commingled money between the time when the proceeds were commingled and the time the security interest in the proceeds is claimed.

**Security interest in goods commingled in a mass or product**

**12.** (1) A security interest in goods that are commingled in a mass of movable properties of the same kind, or are combined with other goods to create a new product extends to the mass or product.

(2) In the case of a security interest that extends to a mass, the security interest is limited to the quantity of goods that were commingled.

**Security interest in trade receivables**

**13.** (1) A security interest in a trade receivable may be created by the grantor and is effective against the debtor of the trade receivable under Part V despite an agreement, between the debtor of the trade receivable and the initial grantor or a subsequent grantor that limits the right or power of the initial or subsequent grantor to create a security interest in the trade receivable.

(2) If an agreement under subsection (1) has been breached by a grantor, this section does not affect an obligation or a liability of the grantor to the debtor of a trade receivable for breach of that agreement, but the debtor of the trade receivable may not ⎯

*(a)* avoid the contract giving rise to the trade receivable on the sole ground of the breach of that agreement; or

*(b)* raise against the secured creditor a claim the debtor on the receivable may have against the grantor as a result of the breach.

(3) A person that is not a party to an agreement under subsection (1) is not liable for the breach of the agreement by the grantor on the sole ground that the person had knowledge of the agreement.

**Security interest in receivable, other intangible property or negotiable instrument**

**14.** (1) A secured creditor with a security interest in a receivable, a negotiable instrument, or other right to payment or performancey, has the benefit of a personal or property right that secures or supports payment or other performance of the encumbered property.

(2) This Act does not impose a requirement of a separate act of transfer of the personal or property right referred to under subsection (1).

(3) If, under another law, the personal or property right referred to under subsection (1) is transferable only with a new act of transfer, the grantor shall transfer the benefit of that right to the secured creditor.

**Security interest in** **funds credited to a deposit account**

**15.** (1) A security interest in funds credited to a deposit account is effective despite an agreement between the grantor and the financial institution limiting the right of the grantor to create a security interest.

(2) Notwithstanding subsection (1), the financial institution is not obliged to pay the secured creditor or provide information about the deposit account to the secured creditor or to a third party unless it agrees to do so.

**Goods covered by document** **of title**

**16.** A security interest in a document of title extends to the goods covered by the document of title, if the issuer of the document of title is in possession of the goods at the time the security interest in the document of title is created.

**Goods with respect to which intellectual property is used**

**17.** A security interest in goods with respect to which intellectual property is used does not extend to the intellectual property and a security interest in the intellectual property does not extend to the goods.

**PART II**

**EFFECTIVENESS OF A SECURITY INTEREST AGAINST**

**THIRD PARTIES**

**Effectiveness against third parties of security interest in encumbered property**

**18. (1)** Except as provided in this Part, a security interest **in encumbered property** is effective against third parties only if a notice with respect to the security interest is registered with the Registrar **under Part III**.

**(2)** A security interest that is not effective against third parties is not effective against a competing claimant with rights in the same encumbered property.

**Third party effectiveness of security interest in tangible property by possession**

**19.** A security interest in a tangible property is effective against third parties if the secured creditor has possession of the tangible property.

**Third party effectiveness of security interest in proceeds**

**20.** If a security interest in movable property is effective against third parties, a security interest under **section 11** in the proceeds of that property is effective against third parties ⎯

*(a)* without a further act if the proceeds of that property are in the form of money, a receivable, a negotiable instrument or funds credited to a deposit account;

*(b)* otherwise ⎯

*(i)* for twenty days after the proceeds of that property arise, and

*(ii)* thereafter only if the security interest in the proceeds of that property is made effective against third parties by one of the methods described in this Part.

**Third party effectiveness of security interest in mass or product to which the security interest extends**

**21.** If a security interest in a tangible property is effective against third parties, a security interest in a mass or product to which the security interest extends under **section 12** is effective against third parties without a further act.

**Third party effectiveness of security interest by different methods**

**22.** (1)A security interest may be made effective against third parties by more than one method.

(2) When a security interest has been made effective against third parties by more than one method, it is treated as having been effective against third parties since the earliest of those methods, so long as there was no time thereafter when the security interest was not effective against third parties.

**Lapse and re-establishment of third-party effectiveness**

**23.** If the third-party effectiveness of a security interest lapses, third-party effectiveness may be re-established but is effective only from the time of its re-establishment.

**Third-party effectiveness on a change of the applicable law**

**24.** (1) If, under Part VII ⎯

*(a)* the law applicable to third-party effectiveness of a security interest in encumbered property is the law of another State;

*(b)* the security interest is effective against third parties under the law of that other State; and

*(c)* subsequently, the law of Saint Lucia becomes applicable to third-party effectiveness of the security interest,

the effectiveness against third parties of the security interest is determined under subsection (2).

(2) In the circumstances described in subsection (1), the security interest

(a) remains effective against third parties until the earlier of

*(i)* the time when third-party effectiveness of the security interest would have lapsed under the law of the other State, and

*(ii)* one hundred and twenty days after the law of Saint Lucia becomes applicable, and

*(b)* is thereafter effective against third-parties only if it is made effective against third parties in accordance with this Act.

(3) If a security interest was effective against third parties under the law of another State and remains effective against third parties under subsection (2)(b) with no lapse, for purposes of the priority under Part IV the time of third-party effectiveness is the time when it was achieved under the law of that other State.

**Third party effectiveness of acquisition security interest in consumer goods**

**25.** An acquisition security interest in consumer goods, other than a motor vehicle [or consumer goods with an acquisition price above EC$25,000] is automatically effective against third parties on its creation, without a further act.

**Third party effectiveness of security interest in funds credited to a deposit account**

**26.** A security interest in funds credited to a deposit account is effective against third parties ⎯

*(a)* if the secured creditor is the financial institution at which the deposit account is maintained;

*(b)* on the conclusion of a control agreement among the secured creditor, the financial institution at which the deposit account is maintained, and the grantor; or

*(c)* on the secured creditor becoming the account holder with respect to the deposit account.

**Third party effectiveness of security interest in** **goods covered by document of title**

**27.** (1) If a security interest in a document of titleis effective against third parties, the security interest that extends to the goods covered by the document of titlein accordance with **section 16** is also effective against third parties.

(2) During the period when a document of titlecovers goods, a security interest in the goods may be made effective against third parties by the possession of the document of titleby the secured creditorcovering the goods. In such a case, the security interest remains effective against third parties for twenty days after the document of titleor the goods covered by the document of titlehas been returned to the grantor or other person for the purpose of dealing with the goods

**PART III**

**THE REGISTRY OF SECURITY INTERESTS IN** **MOVABLE** **PROPERTY**

**Establishment of a Registry of Security Interests in** M**ovable Property and authorization of appointment of a Registrar**

**28.** (1)There isestablished an electronic Registry to be known as the **Registry of** Security Interests in Movable Property (the “Registry”).

 (2) The Registry shall receive the types of notices with respect to security interests listed in Section 29(1)(a) and store and make accessible to the public information on registered notices.

 (2) The Registry shall be operated under the direction of a Registrar of Security Interestsin Movable Property (the “Registrar”), who shall be appointed by the [Judicial and Legal Services Commission]. The Registrar shall be responsible for the operations of the Registry and for ensuring that the Registry is maintained in accordance with this Act, and for the performance of the functions assigned to the Registrar under this Act or another law, which functions may be carried out by a member of staff of the Registry under the direction of the Registrar.

**Register of Security Interests in Movable Property**

**29.** (1) The Registry must be maintained in a manner that provides for ⎯

1. the registration of initial notices, amendment notices, and cancellation notices under this Part; and
2. the assignment of registration numbers to notices, together with notation of the date and time of the registration.

(2) The Registry shall be maintained in a state of availability for public inspection, including the capability to view registered notices by inputting a search of the identifier of the grantoror the registration number of the initial notice, in a manner that associates the initial notice with all related amendment notices and cancellation notices.

 (3) If the registration of a notice is affected by the failure of the Registry to comply with this section the notice remains effective except against a person who obtained an interest in the encumbered property covered by the notice by giving value in reasonable reliance on the information available from the Registry records.

**Integrity of information in the Registry** **records**

**30.** (1) The Registry shall not, except as provided in section 31(1), amend or delete registered notices.

(2) The Registry shall preserve information contained in the Registry records and reconstruct the information in the event of loss or damage.

**Removal of information from the Registry records and archival**

**31.** (1) The Registry shall remove information in a registered notice from the Registry records only on the expiry of the period of effectiveness of the registration of a notice under section 41.

(2) The Registry shall archive information removed from the Registry records —

*(a)* for [ten] years; and

*(b)* in a manner that enables the information to be retrieved by the Registrar.

**Registry fees**

**32.** The Registry shall charge the prescribed fees for services provided.

**Authorization for registration of an initial** **notice or amendment notice**

**33.** (1) Registration of an initial notice of a security interest in movable property of a grantor is ineffective unless authorised by the grantor in writing.

(2) Registration of an amendment notice that ⎯

*(a)* adds encumbered properties or extends the period of effectiveness of the registration of a notice is ineffective unless authorised by the grantor in writing; and

*(b)* adds a grantor is ineffective unless authorised by the additional grantor in writing.

(3) Authorisation by the grantor may be given before or after the registration of an initial notice or amendment notice.

(4) A written security agreement is sufficient to constitute authorisation by the grantor for the registration of an initial notice or amendment notice covering an encumbered property described in the security agreement.

(5) The Registrar may not require evidence of the existence of the authorization of the grantor.

**Information required in an initial notice**

**34.** An initial notice must contain the following information in the relevant designated field ⎯

*(a)* the identifier of the grantor (determined under section 37) and the address of the grantor;

*(b)* the identifier of the secured creditor or its representative (determined under **section 38**) and the address of the secured creditor;

*(c)* a description of the encumbered property under section 39; and

*(d)* other information as may be prescribed for statistical purposes.

**Registration of a single notice**

**35.** The registration of a single notice may relate to security interests created by the grantor in favor of the secured creditor under one or more security agreements.

**Registration of notice before creation of** **security interest**

**36.** A notice may be registered before the creation of a security interest or the conclusion of a security agreement to which the notice relates, if authorised by the grantor under **section 33.**

**Identifier of the grantor**

**37.** If the person to be identified as the grantor in an initial notice or in an amendment notice ⎯

*(a)* is an individual, the identifier of the grantor is ⎯

*(i)* the identification number of the individual on the valid national identification card of the individual,

*(ii)* the name of that individual as it appears on the valid passport of the individual, if the individual has no valid national identification card,

(iii) the name of that individual as it appears on the driver’s licence of the individual, if the individual has no valid national identification card or passport, or

(iv) any other form of identification of that individual, as may be prescribed, if the individual has no valid national identification card, passport, or driver’s license;

*(b)* is a corporation or other legal person, the identifier of the grantor is ⎯

*(i)* the registered number of the corporation assigned by the Registrar of Companies if the grantor is a company registered under the Companies Act Cap. 13.01, or

*(ii)* the name of that corporation as it appears in the relevant document of incorporation or registration of that corporation if the corporation is not a company registered under the Companies Act;

*(c)* is subject to bankruptcy or insolvency proceedings, the identifier of the grantor is the identifier of the trustee, or another representative of the grantor; and

*(d)* is a deceased person, the identifier of the grantor is the identifier of the executor or administrator of the estate of the deceased person as appears on the instrument of appointment.

**Identifier of a secured creditor**

**38.** If the person to be identified as the secured creditor in an initial notice or in an amendment notice that changes the identifier of a secured creditor or adds a secured creditor ⎯

*(a)* is an individual, the identifier of a secured creditor is the name of that person as it appears on ⎯

*(i)* the national insurance card of the individual,

*(ii)* the passport of the individual, if the individual has no national insurance card,

*(iii)* the driver’s licence of the individual, if the individual has no national insurance card or passport; or

*(iv)* any other form of identification of that individual, as may be prescribed;

*(b)* is a corporation or other legal person, the identifier of a secured creditor is the name of that person as it appears in the relevant document incorporating or registering that corporation;

*(c)* if the grantor is subject to bankruptcy or insolvency proceedings, a trustee, or another representative of the corporation; and

*(d)* is a deceased person, the executor or administrator of the estate of the deceased person as appears on the instrument of appointment.

**Description of encumbered properties in notice**

**39.** (1) Subject to subsection (2)—

(a) The encumbered properties must be described in an initial notice, or in an amendment notice that changes the description of the encumbered properties or adds new encumbered properties, in a manner that reasonably allows their identification.

(b) A description that indicates that the encumbered properties consist of all of the movable properties of the grantor, or of all of the movable properties of the grantor within a generic category, is in accordance with subsection (1).

(2) In the case of motor vehicles, the description of encumbered properties must include their vehicle identification number.

**Date and time of effectiveness of the registration of a notice**

**40.** Subject to section 33, the registration of an initial notice, amendment notice, or cancellation notice is effective from the date and time when the information in the notice is entered into the Registry records so that it is accessible to a person who conducts a search of the Registry records.

**Period of effectiveness of the registration of a notice**

**41.** (1) Subject to subsection (2), the registration of an initial notice is effective for five years [or another period as may be prescribed.]

(2) The period of effectiveness of the registration of an initial notice may be extended within six months [or another period as may be prescribed,] before its expiry by the registration of an amendment notice providing for an extension.

(3) The registration of an amendment notice under subsection (2) extends for five years the period of effectiveness for the period under subsection (1) beginning from the time when the current period would have expired if the amendment notice had not been registered.

(4) The period of effectiveness of the registration of an initial notice may be extended more than once.

**Who may register an amendment notice or cancellation notice**

**42.** (1) Subject to subsection (2), only the person identified in an initial notice as the secured creditor may register an amendment notice or cancellation notice relating to that notice.

(2) After registration of an amendment notice changing the person identified in an initial notice or amendment notice as the secured creditor, only the person identified in the amendment notice as the new secured creditor may register an amendment notice or cancellation notice.

(3) Registration of an amendment notice or cancellation notice by any other person is ineffective.

**Mandatory registration of an amendment notice or cancellation notice**

**43.** (1) The secured creditor shall register an amendment notice deleting encumbered properties described in a registered notice if ⎯

*(a)* the grantor has not authorised the registration of a notice in relation to those properties and the secured creditor has been informed by the grantor that it will not authorise that registration;

*(b)* the security agreement to which the registered notice relates has been revised to delete those properties from the security interest and the grantor has not otherwise authorised the registration of a notice covering those properties; or

*(c)* the grantor authorised the registration of a notice covering those properties but the authorisation has been withdrawn and no security agreement covering those properties has been concluded.

(2) The secured creditor shall register a cancellation notice if ⎯

*(a)* the registration of the initial notice was ⎯

*(i)* not authorised by the grantor and the secured creditor has been informed by the grantor that it will not authorise the registration of the initial notice, or

*(ii)* authorised by the grantor but the authorisation has been withdrawn and no security agreement has been concluded, or

*(b)* the security interest to which the initial notice relates has been extinguished.

(3) If the conditions set out in subsection (1) or (2) have been met, the grantor may request the secured creditor in writing, reasonably identifying itself and the related initial notice or amendment notice, to register the appropriate amendment notice or cancellation notice and the secured creditor may not charge or accept any fee or expense for complying with the request of the grantor.

(4) If the secured creditor does not comply with the request of the grantor made under subsection (3) within [fifteen working days] after its receipt, the grantor may seek an order of the Court for the registration of an amendment or cancellation of the notice by the Registrar.

(5) The registration of an amendment or cancellation order is not effective until the Registrar has given the secured creditor [fourteen calendar days]’ notice of an order for the amendment or cancellation of a notice made by the court under subsection (4).

**Errors in required information**

**45.** (1) If the identifier of the grantor entered in an initial notice or an amendment notice that changes the identifier of a grantor or adds a grantor is incorrect, the notice is ineffective unless the information in the notice would be retrieved by a search of the Registry record using the correct identifier of the grantor as the search criterion.

(2) An error in the identifier of the grantor that results in the notice being ineffective with respect to that grantor under subsection (1) does not result in the notice being ineffective with respect to other grantors correctly identified in the notice.

(3) An error in information required to be entered in an initial or amendment notice, other than the identifier of the grantor, does not result in the notice being ineffective unless the error would seriously mislead a reasonable searcher.

(4) An error in the description of an encumbered property that results in the notice being ineffective with respect to the property under subsection (3) does not result in the notice being ineffective with respect to other encumbered properties sufficiently described in the notice.

(5) An error in the prescribed statistical information does not affect the effectiveness of the notice.

**Post-registration change of identifier of the grantor**

**46.** (1) Subject to subsections (2) and (3), the third-party effectiveness and priority of a security interest that was made effective against third parties by registration of a notice are not affected by a change in the identifier of the grantor after the notice is registered.

(2) If the identifier of the grantor changes after a notice is registered, a competing security interest created by the grantor that was made effective against third parties after the change has priority over the security interest to which the notice relates unless either the security interest to which the notice relates is made effective against third parties by a method other than registration of a notice or an amendment notice disclosing the new identifier of the grantor is registered ⎯

(a) before the expiry of one hundred and twenty days after the change; or

(b) after the expiry of the period under paragraph *(a)* but before the competing security interest is made effective against third parties.

(3) If the identifier of the grantor changes after a notice is registered, a buyer to whom the encumbered property is sold after the change acquires its rights free of the security interest to which the notice relates unless either the security interest to which the notice relates is made effective against third parties by a method other than registration of a notice or an amendment notice disclosing the new identifier of the grantor is registered ⎯

*(a)* before the expiry of the period under subsection (2)*(a)*; or

*(b)* after the expiry of the period under subsection (2)*(b)*, but before the buyer acquires an interest in the property.

(4) Subsections (2) and (3) do not apply if the information in the notice under subsection (1) would be retrieved by a search using the new identifier of the grantor as a search criterion.

**Post-registration transfer of an encumbered property**

**47.** The third-party effectiveness and priority of a security interest in an encumbered property that is made effective against third parties by registration of a notice are not affected by a sale of the property after the notice is registered to a buyer that acquires [his/hers/its] rights subject to the security interest.

**PART IV**

**PRIORITY OF A SECURITY INTEREST AS AGAINST**

**COMPETING CLAIMANTS**

**Priority amongst competing security interests**

**48.** (1) Subject to **sections 52, 55, 56, 58, 59 and 60**, priority amongst competing security interests created by the same grantor in the same encumbered property is determined as follows:

*(a)* as between security interests each of which was made effective against third parties by registration of a notice in the Registry, priority is determined by the order of registration, without regard to the order of creation of the security interests;

*(b)* as between security interests each of which were made effective against third parties otherwise than by registration of a notice in the Registry, priority is determined by the order of third-party effectiveness; and

*(c)* as between a security interest that was made effective against third parties by registration of a notice in the Registry and a security interest that was made effective against third parties otherwise than by registration of a notice in the Registry, priority is determined by the order of registration or third-party effectiveness, whichever occurs first for each of the security interests.

(2) Subject to **section 47**, priority amongst competing security interests created by different grantors in the same encumbered property is determined according to subsection (1)**.**

**Priority amongst competing security interests created by different grantors**

**49.** Subject to **section 47**, priority amongst competing security interests created by different grantors in the same encumbered property is determined according to **section 48.**

**Priority not affected by change in the method of third-party effectiveness**

**50.** The priority of a security interest under **section 48** is not affected by a change in the method by which it is made effective against third parties under Part II, if there is no time when the security interest is not effective against third parties.

**Priority when one or both security interests is in proceeds**

**51.** For the purposes of **section 48**, if a security interest in proceeds of an encumbered property is effective against third parties under **section 20**, the priority of the security interest in the proceeds is determined by using the same time of registration or third-party effectiveness that would be used to determine the priority of the security interest in the encumbered property to which the proceeds relate.

**Priority of security interests in tangible property commingled in a mass or transformed in a product**

**52.** (1) If two or more security interests in the same tangible property extend to a mass or product under **section 12** and each security interest is effective against third parties under **section 21**, the priority of each security interest in the mass or product is the same as the priority that each security interest in that tangible property had immediately before the tangible property was commingled in a mass or transformed in a product.

(2) If more than one security interest extends to the same mass or product under **section 12** and each was a security interest in a separate tangible property at the time of commingling or transforming, the secured creditors are entitled to share in the mass or product according to the ratio that the obligation secured by each security interest bears to the sum of the obligations secured by all the security interests.

(3) For the purposes of subsection (2), the obligation secured by a security interest that extends to the mass or product is subject to a limitation on the security interest under **section 12.**

**Priority of the rights of a buyer or other transferee, lessee or licensee of encumbered property**

**53.** (1) If an encumbered property is sold or otherwise transferred, leased or licensed while the security interest in that property is effective against third parties, the buyer, transferee, lessee or licensee acquires rights subject to the security interest except as provided in this section.

(2) A buyer or another transferee of an encumbered property acquires rights free of the security interest if the secured creditor authorises the sale or other transfer of the property free of the security interest.

(3) The rights of a lessee or licensee of an encumbered property are not affected by a security interest if the secured creditor authorises the grantor to lease or license the property unaffected by the security interest.

(4) A buyer of goods sold in the ordinary course of the business of the seller acquires rights free of the security interest, if, at the time of the conclusion of the sale agreement, the buyer does not have knowledge that the sale violates the rights of the secured creditor under the security agreement between the seller and the secured creditor.

(5) The rights of a lessee of goods leased in the ordinary course of the business of the lessor are not affected by the security interest, if, at the time of the conclusion of the lease agreement, the lessee does not have knowledge that the lease violates the rights of the secured creditor under the security agreement between the lessor and the secured creditor.

(6) Subject to the rights of a secured creditor with a security interest in intellectual property under **section 67**, the rights of a non-exclusive licensee of an intangible encumbered property licensed in the ordinary course of the business of the licensor are not affected by the security interest, if, at the time of the conclusion of the license agreement, the licensee does not have knowledge that the license violates the rights of the secured creditor under the security agreement between the licensor and the secured creditor.

(7) If a buyer or other transferee of a tangible encumbered property acquires rights free of a security interest, a subsequent buyer or another transferee also acquires rights free of that security interest.

(8) If the rights of a lessee of a tangible encumbered property or a licensee of an intangible encumbered property are not affected by the security interest, the rights of a sub-lessee or sub-licensee are also unaffected by that security interest.

(9) A buyer acquires rights free of, and the rights of a lessee are not affected by, an acquisition security interest in consumer goods unless the security interest is made effective against third parties otherwise than under **section 25** before the buyer or lessee acquires rights in the goods.

**Rights of a judgement creditor**

**54.** (1) Subject to **section 57,** the rights of a judgement creditor have priority over a security interest if, before the security interest is made effective against third parties, the judgement creditor has seized or levied on the encumbered property.

(2) If a security interest is made effective against third parties before or at the same time the judgement creditor acquires right in an encumbered property by seizing or levying on the encumbered property, the security interest has priority, but that priority is limited to the greater of the credit extended by the secured creditor ⎯

*(a)* before the secured creditor received a notification from the judgement creditor that the judgement creditor has taken the steps under subsection (1) or within [twenty days] thereafter; or

*(b)* pursuant to an irrevocable commitment of the secured creditor to extend credit in a fixed amount or an amount to be fixed pursuant to a specified formula, if the commitment was made before the secured creditor received a notification from the judgement creditor that the judgement creditor had taken the steps under subsection (1).

**Priority of acquisition security interest**

**55.** (1) An acquisition security interest in equipment, or in intellectual property or the rights of a licensee under a license of intellectual property primarily used or intended to be used by the grantor in the operation of its business, has priority over a competing security interest created by the grantor that is not an acquisition security interest, if ⎯

*(a)* the secured creditor with an acquisition security interest is in possession of the equipment; or

*(b)* a notice with respect to the acquisition security interest is registered in the Registry before the expiry of [twenty days] after the grantor obtains possession of the equipment or the agreement for the sale or license of the intellectual property to the grantor has been concluded.

(2) An acquisition security interest in inventory, or in intellectual property or the rights of a licensee under a license of intellectual property held by the grantor for sale or license in the ordinary course of the business of the grantor, has priority over a competing non-acquisition security interest created by the grantor, if ⎯

*(a)* the secured creditor with an acquisition security interest is in possession of the inventory; or

*(b)* before the grantor obtains possession of the inventory or the agreement for the sale or license of the intellectual property to the grantor has been concluded ⎯

*(i)* a notice with respect to the acquisition security interest is registered in the Registry, and

*(ii)* a secured creditor that has registered a notice in the Registry with respect to a non-acquisition security interest created by the grantor in a movable property of the same kind receives a notification from the acquisition secured creditor stating that it has or intends to obtain an acquisition security interest in the movable property described in the notification and describes the movable property so as to reasonably allow its identification.

(3) An acquisition security interest in consumer goods, or in intellectual property or the rights of a licensee under a license of intellectual property primarily used or intended to be used by the grantor for personal, family or household purposes, has priority over a competing non-acquisition security interest created by the grantor.

(4) A notification, sent under subsection 2*(b)*(ii) ⎯

*(a)* may cover acquisition security interests under multiple transactions between the same parties without the need to identify each transaction; and

*(b)* is sufficient only for security interests in inventory of which the grantor obtains possession, or intellectual property or rights of a licensee under a license of intellectual property held by the grantor for sale or license in the ordinary course of the business of the grantor which the grantor acquires, not later than [five years] after the notification is received.

**Priority amongst competing acquisition security interests**

**56.** (1) Subject to subsection (2), priority amongst competing acquisition security interests is determined under **section 51.**

(2) An acquisition security interest of a seller or lessor, or of a licensor of intellectual property that was made effective against third parties not later than the expiry of the period specified under **section 55(1)*(b)*,** has priority over a competing acquisition security interest.

**Acquisition security interests and the rights of a judgement creditor**

**57.** An acquisition security interest that is made effective against third parties not later than the expiry of the period specified under **section 55 (1)*(b)*** has priority over the rights of a judgement creditor that would otherwise have priority under **section 54.**

**Security interests in proceeds of** movable **property subject to an acquisition security interest**

**58.** (1) Subject to subsection (2), a security interest in proceeds of a movable property that is the subject of an acquisition security interest has the same priority over a competing security interest that the acquisition security interest in the movable property from which the proceeds arose has under **section 55.**

(2) If the proceeds arose from inventory, or from intellectual property or rights of a licensee under a license of intellectual property held by the grantor for sale or license in the ordinary course of the business of the grantor, the security interest in the proceeds has the same priority over a competing security interest that ⎯

*(a)* a non-acquisition security interest in a movable property of the same kind as the proceeds has under **section 48** if the proceeds take the form of a receivable, negotiable instrument, or a right to funds credited to a deposit account; and

*(b)* the acquisition security interest in the movable property from which the proceeds arose has under **section 55** if the proceeds take another form, provided that before the proceeds arose a secured creditor that has registered a notice in the Registry with respect to a non-acquisition security interest created by the grantor in a movable property of the same kind as the proceeds receives a notification from the acquisition secured creditor stating that it has or intends to obtain a security interest in properties of that kind and describes those properties sufficiently to enable them to be identified.

**Acquisition security interests extending to a mass or product**

**59.** Subject to **section 55,** an acquisition security interest in a tangible property that extends to a mass or product and is effective against third parties has priority over a non-acquisition security interest granted by the same grantor in the mass or product.

**Subordination**

**60.** (1) A person may at any time subordinate the priority of that person’s rights under this Act in favor of an existing or future competing claimant without the need for the person whose rights will benefit from the subordination to be a party to the subordination.

(2) Subordination does not affect the rights of competing claimants other than the person subordinating priority and the beneficiary of the subordination.

**Priority with respect to future advances and future encumbered assets**

**61.** (1) Subject to the rights of a judgement creditor under **section 54**, the priority of a security interest as against competing claimants extends to all secured obligations, including obligations incurred after the security interest became effective against third parties.

(2) The priority of a security interest as against competing claimants covers all encumbered properties described in a notice registered in the Registry, whether they are acquired by the grantor or come into existence before or after the time of registration.

**Knowledge of existence of security interest**

**62.** Knowledge on the part of one secured creditor of the existence of a security interest of another secured creditor has no effect on the priority ranking of the security interests.

**Security interest in negotiable instrument**

**63.** (1) A security interest in a negotiable instrument that is made effective against third parties by possession of the instrument has priority over a security interest in the instrument that is made effective against third parties by registration of a notice in the Registry.

(2) A buyer or other consensual transferee of an encumbered negotiable instrument acquires its rights free of a security interest that is made effective against third parties by registration of a notice in the Registry if the buyer or other transferee ⎯

*(a)* qualifies as a holder in due course of the negotiable instrument under the *Commercial Code* [insert citation]; or

*(b)* takes possession of the negotiable instrument and gives value without knowledge that the sale or other transfer is in violation of the rights of the secured creditor under the security agreement.

**Security interest in funds credited to a deposit account**

**64.** (1) A security interest in funds credited to a deposit account that is made effective against third parties by the secured creditor becoming the account holder with respect to the deposit account has priority over a competing security interest that is made effective against third parties by another method.

(2) A security interest in funds credited to a deposit account with respect to which the secured creditor is the financial institution at which the account is maintained has priority over a competing security interest made effective against third parties by any method, except a security interest that is made effective against third parties by the secured creditor becoming the account holder with respect to the deposit account.

(3)A security interest in funds credited to a deposit account that is made effective against third parties by a control agreement among the secured creditor, the financial institution at which the deposit account is maintained, and the grantor has priority over a competing security interest except ⎯

*(a)* a security interest of the financial institution at which the account is maintained; or

*(b)* a security interest that is made effective against third parties by the secured creditor becoming the account holder with respect to the deposit account.

(4) The priority among competing security interests in funds credited to a deposit account that are made effective against third parties by the conclusion of control agreements is determined by the order in which the control agreements were entered into.

(5) The right of a financial institution under another law to set off obligations owed to it by the grantor against the right of the grantor to payment of funds credited to a deposit account maintained with the financial institution has priority as against a security interest in the right to payment of funds credited to the deposit account, except a security interest that is made effective against third parties by the secured creditor becoming the account holder.

(6) A transferee of funds from a deposit account pursuant to a transfer initiated or authorised by the grantor acquires his, her or its rights free of a security interest in funds credited to the deposit account, unless the transferee has knowledge that the transfer violates the rights of the secured creditor under the security agreement.

**Possession of money** **subject to security interest**

**65.** A transferee that obtains possession of money that is subject to a security interest acquires his, her or its rights free of the security interest, unless the transferee has knowledge that the transfer violates the rights of the secured creditor under a security agreement.

**Priority of the security interest in** **tangible property covered by document** **of title**

**66.** (1) Subject to subsection (2), a security interest in a tangible property made effective against third parties by possession of the document of title covering that tangible property has priority over a competing security interest made effective against third parties by another method.

(2) Subsection (1) does not apply to a security interest in a tangible property other than inventory if the security interest of the secured creditor not in possession of the document of title was made effective against third parties before the earlier of ⎯

*(a)* the time that the tangible property became covered by the document of title; and

*(b)* the time of conclusion of a security agreement between the grantor and the secured creditor in possession of the document of title providing for the property to be covered by a document of title if the property became so covered within [twenty] days from the date of the agreement.

(3) A transferee of an encumbered document of title that obtains possession of the document acquires his her or its rights free of a security interest in the document of title and the tangible property covered thereby that is made effective against third parties by another method.

**Intellectual property rights**

**67.** **Section 53 (6)** does not affect the intellectual property rights that a secured creditor may have as an owner or licensor of intellectual property.

**Security interest in** n**on-intermediated securities**

**68.** (1) A security interest in certificated non-intermediated securities made effective against third parties by the possession by the secured creditor of the certificate has priority over a competing security interest created by the same grantor in the same securities made effective against third parties by registration of a notice in the Registry.

(2) A security interest in uncertificated non-intermediated securities made effective against third parties ⎯

*(a)* by a notation of the security interest or entry of the name of the secured creditor as the holder of the securities in the books maintained for that purpose by or on behalf of the issuer has priority over a security interest in the same securities made effective against third parties by another method.

*(b)* by the conclusion of a control agreement, has priority over a security interest in the same securities made effective against third parties by registration of a notice in the Registry.

(3) The order of priority among competing security interests in uncertificated non-intermediated securities made effective against third parties by the conclusion of control agreements is determined on the basis of the time of conclusion of the control agreements.

(4) This section does not adversely affect the rights of a protected holder of non-intermediated securities under the *Securities Act, Cap 12.18*.

**PART V**

**RIGHTS AND OBLIGATIONS OF THE GRANTOR, SECURED CREDITOR AND THIRD-PARTIES**

**Obligations of grantor and secured creditor**

**69.** (1) The rights and obligations of the grantor and the secured creditor arising from the security agreement are determined by that agreement.

(2) The grantor and the secured creditor are bound by the usages to which they have agreed and, unless otherwise agreed, by a practice they have established between themselves.

**Grantor and secured creditor in possession to exercise reasonable care**

**70.** (1) A grantor or secured creditor in possession of an encumbered property must exercise reasonable care to preserve the property and its value.

(2) The secured creditor must be reimbursed for reasonable expenses incurred for the preservation of the encumbered property.

**Extinguishment of security interest**

**71.** On the extinguishment of a security interest in an encumbered property, the secured creditor in possession must ⎯

*(a)* return the property to the grantor; or

*(b)* deliver the property to the person designated by the grantor**.**

**Inspection of encumbered property**

**72.** A secured creditor may inspect an encumbered property in the possession of the grantor or another person.

**Secured creditor to provide information on request**

**73.** (1) Within [twenty days] after receipt of a written request by a grantor, a secured creditor (other than a transferee under a transfer of a receivable) must send to the grantor at the address specified in the request ⎯

*(a)* a statement of the obligation secured; and

*(b)* a description of the encumbered properties.

[(2). A grantor is entitled without charge to one response to a request during each [twenty day period].

(3). The secured creditor may require payment of a charge not exceeding the prescribed amount for each additional response.]

**Representations of grantor of security interest in receivable**

**74.** At the conclusion of a security agreement that creates a security interest in a receivable ⎯

*(a)* the grantor represents that ⎯

*(i)* the grantor has not previously created a security interest or other encumbrance in the receivable in favor of another secured creditor or another party; and

*(ii)* the debtor of the receivable does not and will not have a defence or right of set-off, but

*(b)* the grantor does not represent that the debtor of the receivable has, or will have, the ability to pay.

**Notification of security interest to debtor of receivable**

**75.** (1) The grantor or the secured creditor or both may give the debtor of the receivable notification of the security interest and a payment instruction, but after notification of the security interest has been received by the debtor of the receivable only the secured creditor may send a payment instruction.

(2) Notification of a security interest or of a payment instruction sent in breach of an agreement between the grantor and the secured creditor is not ineffective for the purposes of **section 79**, but this section does not affect an obligation or a liability of the party in breach for damages arising as a result of the breach.

**Right of secured creditor to payment made with respect to a receivable**

**76.** (1) As between the grantor of a security interest in a receivable and the secured creditor, whether or not notification of the security interest has been sent to the debtor of the receivable, if payment with respect to the receivable is made ⎯

*(a)* to the secured creditor, the secured creditor is entitled to retain any payments with respect to the receivable that are made to the secured creditor, and to retain any to the tangible property returned with respect to the receivable;

*(b)* to the grantor, whether in a deposit account controlled by the secured creditor or otherwise, the secured creditor is entitled to the proceeds of any payments with respect to the receivable that are made to the grantor and to any property returned to the grantor with respect to the receivable; and

*(c)* to another person over whom the secured creditor has priority, the secured creditor is entitled to the proceeds of any payments with respect to the receivable that are made to that person.

(2) Except in the case of a transfer of a receivable, the secured creditor may not retain more than the value of the obligation secured by the receivable.

**Debtor not affected by creation of security interest in receivable**

**77.** (1) Except as otherwise provided in subsection (2) or elsewhere in this Act, the creation of a security interest in a receivable does not, without the consent of the debtor of the receivable, affect that person’s rights and obligations, including the payment terms contained in the agreement giving rise to the receivable.

(2) A payment instruction may change the person, address or account to which the debtor of the receivable is required to make payment, but may not change ⎯

*(a)* the currency of payment specified in the agreement giving rise to the receivable; or

*(b)* the State in which payment is to be made to, other than to a State in which the debtor of the receivable is located.

**Effectiveness of notification of security interest in receivable**

**78.** (1) A notification of a security interest in a receivable or a payment instruction is effective when received by the debtor of the receivable if it reasonably identifies the encumbered receivable and the secured creditor, and is in a language that is reasonably expected to inform the debtor of the receivable about its contents.

(2) It is sufficient if a notification of the security interest or a payment instruction is in the language of the contract giving rise to the receivable.

(3) Encumbered receivables covered in a notification or payment instruction may include receivables that will arise after notification.

**Discharge of debtor of receivable**

**79.** (1) Until the debtor of the receivable receives notification of a security interest in a receivable, the debtor is discharged from the obligation on the receivable by paying in accordance with the agreement giving rise to the receivable.

(2) After the debtor of the receivable receives notification of a security interest in a receivable, subject to subsections (3) to (7), the debtor is discharged only by paying the secured creditor or, if otherwise instructed in the notification or subsequently by the secured creditor in a writing received by the debtor of the receivable, in accordance with that payment instruction.

(3) If the debtor of the receivable receives more than one payment instruction relating to a single security interest in the same receivable created by the same grantor, the debtor is discharged by paying in accordance with the last payment instruction received from the secured creditor before payment.

(4) If the debtor of the receivable receives notification ⎯

*(a)* of more than one security interest in the same receivable created by the same grantor, the debtor is discharged by paying in accordance with the first notification received.

*(b)* of more than one security interest in the same receivable created by different grantors (whether it is the initial grantor or a secured creditor that grants a security interest in the receivable to a subsequent secured creditor), the debtor is discharged by paying in accordance with the notification of the last of the security interests.

*(c)* of a security interest in a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or by paying in accordance with this section as if the debtor of the receivable had not received the notification.

*(d)* as provided in paragraph *(c)* and pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid.

*(e)* of a security interest in the receivable from the secured creditor, the debtor of the receivable may request the secured creditor to provide ⎯

*(i)* within a reasonable period of time, adequate proof of [his her or its] security interest; and

*(ii)* if the security interest is created in favour of a secured creditor by the initial or another secured creditor ⎯

*(aa)* adequate proof of the security interest created by the initial grantor in favour of the initial secured creditor, and

*(bb)* of an intermediate security interest.

(5) Until the secured creditor complies with a request under subsection (4)*(e),* the debtor of the receivable is discharged by paying the grantor in accordance with this section as if the debtor had not received notification of the security interest.

(6) Adequate proof of a security interest under subsection (4*)(e)* includes a written communication from the grantor which indicates that a security interest has been created.

(7) This section does not affect another ground on which payment by the debtor of the receivable to the person entitled to payment or authorised to receive payment discharges the debtor of the receivable.

**Defences and rights of set-off of debtor of receivable**

**80.** (1) Unless otherwise agreed under **section 81,** in a claim by the secured creditor against the debtor of the receivable for payment of the encumbered receivable, the debtor of the receivable may raise against the secured creditor ⎯

*(a)* in the case of a receivable arising from an agreement, all defences and rights of set-off arising from the agreement giving rise to the receivable or another agreement that was part of the same transaction, and that the debtor of the receivable could raise if the security interest had not been created and the claim were made by the grantor; and

*(b)* any other right of set-off that was available to the debtor of the receivable at the time the debtor received notification of the security interest.

(2) Despite subsection (1), the debtor of the receivable may not raise as a defence or right of set-off against the secured creditor a breach of an agreement under **section 13(2**) limiting the right of the grantor to create the security interest.

**Agreement not to raise defences or rights of set-off**

**81.** (1) Subject to subsection (3), the debtor of the receivable may agree with the grantor in a writing signed by the debtor of the receivable not to raise against the secured creditor the defences and rights of set-off that it could raise under **section 80.**

(2) The agreement under subsection (1) may be modified only by an agreement in writing signed by the debtor of the receivable; the effectiveness of that modification against the secured creditor is determined under **section 82.**

(3) The debtor of the receivable may not waive a defence arising from a fraudulent act on the part of the secured creditor or based on the incapacity of the debtor of the receivable.

**Modification of agreement giving rise to receivable**

**82.** (1) If a receivable arose by agreement between the grantor and the debtor of the receivable and those parties modify that agreement, the modification is effective against the secured creditor, and the secured creditor acquires corresponding rights under the modified agreement, if the modification was concluded before notification of the security interest in the receivable.

(2) If a modification referred to in subsection (1) is concluded after notification of the security interest in the receivable, the modification is ineffective against the secured creditor unless ⎯

*(a)* the secured creditor consents to it; or

*(b)* (i) at the time of the agreement, the receivable was not fully earned by performance, and (ii) either the modification is provided for in the agreement giving rise to the receivable or, in the context of that agreement, a reasonable secured creditor would consent to the modification.

(3) Subsections (1) and (2) do not affect a right of the grantor or the secured creditor arising from breach of an agreement between them.

**No recovery from secured creditor**

**83.** The failure of the grantor of the security interest to perform an obligation under the agreement giving rise to a receivable does not entitle the debtor of the receivable to recovery from the secured creditor.

**Security interest in negotiable instrument**

**84.** The rights of a secured creditor that has a security interest in a negotiable instrument as against a person obligated on the negotiable instrument are determined by the provisions of Title VII on Bills of Exchange of the *Commercial Code, Cap 244.*

**Rights as against the financial institution**

**85.** (1) The creation of a security interest in funds credited to a deposit account maintained with a financial institution does not ⎯

*(a)* affect the rights and obligations of the financial institution without its consent; or

*(b)* obligate the financial institution to provide information about the deposit account to third parties.

(2) Unless otherwise agreed, a right of set-off that a financial institution with which a deposit account is maintained may have is not affected by a security interest that the financial institution may have in funds credited to that deposit account.

**Rights as against issuer of document of title**

**86.** The rights of a secured creditor that has a security interest in a document of title as against the issuer of the document of title or another person obligated on the document of title are determined in accordance with the law applicable to that document of title*.*

**PART VI**

**ENFORCEMENT OF A SECURITY INTEREST**

**Rights exercisable after default**

**87.** (1) After default, the grantor and the secured creditor may ⎯

*(a)* exercise any right under Part VI of this Act; or

*(b)* exercise any right provided in the security agreement, except to the extent it is inconsistent with paragraph (3) or with provisions of this Act that may not be derogated from or varied by an agreement of the parties under clause 4.

(2) The exercise of one right after default does not prevent the exercise of another right after default, except to the extent that the exercise of one right makes the exercise of another right impossible.

(3) Before default, a grantor or debtor may not waive unilaterally or vary by agreement any of its rights under this Part.

**Exercise of rights after default**

**88.** (1) A secured creditor may exercise its rights after default in accordance with this Act either by application to the Court or without application to the Court.

(2) The exercise of the rights of a secured creditor after default without application to the Court is determined by this Part.

(3) A dispute with respect to rights after default may be submitted to arbitration, mediation or other alternative dispute mechanism, by agreement of the parties.

R**elief for non-compliance**

**89.** If a secured creditor does not comply with this Part, the grantor, another person with a right in the encumbered property, or the debtor may seek relief by application to the Court.

**Termination of enforcement and redemption of** **encumbered property**

**90.** (1) The grantor, another person with a right in the encumbered property, or the debtor may terminate the secured creditor’s exercise of its rights after default and redeem the encumbered property by paying or otherwise performing the secured obligation in full, including the reasonable cost of enforcement.

(2) The right to terminate the secured creditor’s exercise of its rights after default and redeem the encumbered property may be exercised until the earlier of ⎯

*(a)* the sale or other disposition or the collection of the encumbered property by the secured creditor; and

*(b)* the conclusion of an agreement by the secured creditor for the sale or other disposition of the encumbered property.

**Secured creditor with priority to take over enforcement**

**91.** (1) Despite the commencement of another secured creditor’s exercise of its rights after default, a secured creditor whose security interest has priority over that of the other secured creditor may take over enforcement before the earlier of ⎯

*(a)* the sale or other disposition, acquisition or collection of an encumbered property by the enforcing secured creditor; or

*(b)* the conclusion of an agreement by the enforcing secured creditor for the sale or other disposition of an encumbered property.

(2) The right of the secured creditor with priority to take over the enforcement process includes the right to enforce by a method available to a secured creditor under **section 87.**

**Secured creditor’s right to possession of encumbered property after default**

**92.** (1) Subject to the rights of a person, including a lessee or licensee, with a superior right to possession, a secured creditor may obtain possession of an encumbered property after default either --

 (a) by application to the Court, or

 (b) without application to the Court, by any method permitted by law and subject to the conditions specified in subsection (2).

(2) If a secured creditor decides to exercise the right under subsection (1) without applying to the Court, all of the following conditions must be satisfied ⎯

*(a)* in the security agreement or otherwise, the grantor has consented in writing to the secured creditor obtaining possession after default without applying to the Court;

*(b)* the secured creditor has given the grantor and a person in possession of the encumbered property notification of default and of the intent of the secured creditor to obtain possession; and

*(c)* at the time the secured creditor attempts to obtain possession of the encumbered property, the person in possession of the encumbered property does not object in such a manner that continuing the attempt to obtain possession of the encumbered property would likely to lead to an immediate loss of public order and tranquility.

(3) The notification of default and intent to obtain possession under subsection (2)*(b)* need not be given if the encumbered property is perishable or may decline in value speedily.

(4) If a secured creditor whose security interest has priority over the security interest of another secured creditor is in possession of the encumbered property, the secured creditor whose security interest does not have priority may not obtain possession of the property.

**Disposal of encumbered property**

**93.** (1) After default, a secured creditor may sell or otherwise dispose of, lease or license the encumbered property either

 (a) by application to the Court, or

 (b) without application, subject to the conditions specified in subsection (2).

(2) If a secured creditor decides to sell or otherwise dispose of, lease or license the encumbered property without applying to the Court, the secured creditor may select the method, manner, time, place and other aspects of the sale or other disposition, lease or license, including whether to sell or otherwise dispose of, lease or license encumbered properties individually, in groups or as a whole, so long as the sale or other disposition is at a reasonable market value or in a commercially reasonable manner having regard to the condition of the property.

(3) The secured creditor may buy encumbered property —

*(a)* at a public auction; or

*(b)* at a private auction but only if the encumbered property is of a kind that is customarily sold on a recognised market.

(4) If a secured creditor decides to sell or otherwise dispose of, lease or license the encumbered property under subsection (1) without applying to the Court, the secured creditor shall give notification of [his, her or its] intention to ⎯

*(a)* the grantor and the debtor;

*(b)* a person with a right in the encumbered property that informs the secured creditor of that right in writing at least [fifteen working days] before the notification is sent to the grantor;

*(c)* another secured creditor that ⎯

*(i)* registered a notice with respect to a security interest in the encumbered property at least [fifteen working days] before the notification is sent to the grantor; or

*(ii)* was in possession of the encumbered property when the enforcing secured creditor took possession.

(5) The notification of the secured creditor’s intention under subsection (4) must be sent at least [fifteen working days] before the sale or other disposition, lease or licence takes place and must contain ⎯

*(a)* a description of the encumbered properties;

*(b)* a statement of the amount required at the time the notification is given to satisfy the secured obligation, including interest and the reasonable cost of enforcement;

*(c)* a statement on the manner of the intended disposition;

*(d)* a statement that the grantor, another person with a right in the encumbered property or the debtor is entitled to terminate the enforcement process under **section 88**; and

*(e)* a statement of the date after which the encumbered property will be sold or otherwise disposed of, leased or licensed, or, in the case of a public disposition, the time, place and manner of the intended disposition.

(6) The notification under subsection (4) must be in a language that is reasonably expected to inform the recipient about its content.

(7) It is sufficient if the notification to the grantor under subsection (4) is in the language of the security agreement.

(8) The notification under subsection (4) need not be given if the encumbered property may perish before the end of the [fifteen working] days after the secured creditor obtains possession, may decline in value quickly or is of a kind sold on a recognised market.

**Distribution of proceeds of encumbered** **property**

**94.** (1) If a secured creditor decides to exercise the right under **section 93** by applying to the Court, the distribution of the proceeds of sale or other disposition of, lease or license of an encumbered property is determined by [Civil Code, Cap 4.01, Code of Civil Procedure, Cap 243 or/and/the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000,] but in accordance with the provisions of this Act on priority.

(2) If a secured creditor decides to exercise the right provided under **section 91** without applying to the Court ⎯

*(a)* the enforcing secured creditor must apply the proceeds of enforcement to the secured obligation after deducting the reasonable cost of enforcement, such as repossessing, holding, preparing for disposition, processing, and disposing of the encumbered property;

*(b)* except as provided under paragraph *(c)*, the enforcing secured creditor shall pay the surplus remaining to a subordinate competing claimant that, prior to a distribution of the surplus, notified the enforcing secured creditor of the subordinate claimant’s claim, to the extent of the amount of that claim, and remit the balance remaining to the grantor; and

*(c)* whether or not there is a dispute as to the entitlement or priority of a competing claimant under this Act, the enforcing secured creditor may pay the surplus to an authorised person or deliver it to a judicial sequestrator pursuant to Civil Code of Saint Lucia, Cap. 4.01, section 1723, for distribution in accordance with the provisions of this Act on priority.

(3) A debtor remains liable for an amount owing after application of the net proceeds of enforcement to the secured obligation.

**Proposal to acquire encumbered** **property in satisfaction of secured obligation**

**95.** (1) After default, a secured creditor may propose in writing to acquire one or more of the encumbered properties in total or partial satisfaction of the secured obligation.

(2) The secured creditor shall send the proposal to ⎯

*(a)* the grantor and the debtor;

*(b)* each person with an interest in the encumbered property that has notified the secured creditor in writing of that interest, at least [fifteen working days] before the proposal is sent to the grantor;

*(c)* each other secured creditor that ⎯

*(i)* registered a notice with respect to a security interest in the encumbered property at least [fifteen working days] before the proposal is sent to the grantor, and

*(ii)* was in possession of the encumbered property when the secured creditor took possession.

(3) In the proposal under subsection (1), the secured creditor shall include a statement ⎯

*(a)* identifying the secured creditor and grantor and the encumbered properties that the secured creditor proposes to acquire;

*(b)* indicating the amount owed, at the date the proposal is sent, to satisfy the secured obligation, including ⎯

*(i)* interest,

*(ii)* the reasonable cost of enforcement, and

*(iii)* the amount of the secured obligation that is proposed to be satisfied;

*(c)* indicating whether the secured creditor proposes to acquire the encumbered property described in the proposal in total or partial satisfaction of the secured obligation and, in the latter case, the amountof the obligation that is proposed to be satisfied by acquiring theencumbered property;

 *(f)* indicating that the grantor, another person with an interest in the encumbered property or the debtor may terminate the enforcement or redeem the encumbered property as provided under **section 90**; and

*(g)* indicating the date after which the encumbered property will be acquired by the secured creditor.

(4) A secured creditor that has made a proposal for the acquisition of an encumbered property ⎯

*(a)* in full satisfaction of the secured obligation, acquires the encumbered property, unless the secured creditor receives an objection in writing from a person entitled to receive the proposal under subsection (2) within [fifteen working days] after the proposal is sent to that person.

*(b)* in partial satisfaction of the secured obligation, acquires the encumbered property only if the secured creditor receives the consent in writing of all persons entitled to receive the proposal under subsection (2) within [fifteen working days] after the proposal is sent to each of them.

(5) The grantor may request the secured creditor to make a proposal under subsection (1) and, if the secured creditor accepts the request of the grantor, the secured creditor shall proceed as provided under subsections (2), (3) and (4).

**Rights acquired upon disposition of encumbered** **property**

**96.** If a secured creditor ⎯

*(a)* sells or otherwise disposes of an encumbered property, the buyer or other transferee acquires the right of the grantor in the property free of the rights of the enforcing secured creditor and each competing claimant except the rights that have priority over the security interest of the enforcing secured creditor.

*(b)* leases or licenses an encumbered property, the lessee or licensee is entitled to the benefit of the lease or licence during its term, except as against a creditor with a right that has priority over the right of the enforcing secured creditor.

*(c)* sells or otherwise disposes of, leases or licenses the encumbered property and does so in violation of this Part, the buyer or other transferee, lessee or licensee of the encumbered property acquires the rights or benefits described under paragraphs *(a)* and *(b)* if the buyer or other transferee, lessee or licensee had no knowledge of a violation of this Part that materially prejudiced the rights of the grantor or another person.

**Collection of payment** **by secured creditor**

**97.** (1) After default, a secured creditor with a security interest in a receivable, negotiable instrument or funds credited to a deposit account may collect payment from the ⎯

*(a)* debtor of the receivable;

*(b)* obligor under the negotiable instrument; or

*(c)* financial institution maintaining the deposit account.

(2) A secured creditor may, with the consent of the grantor, exercise the right to collect under subsection (1) before the default.

(3) A secured creditor exercising the right to collect payment under subsection (1) or (2) may enforce a personal or property right that secures or supports payment of the encumbered property.

(4) If a security interest in funds credited to a deposit account has been made effective against third parties only by registration of a notice, the secured creditor may collect or otherwise enforce the security interest of the secured creditor only pursuant to an order of the Court, unless the financial institution agrees otherwise.

(5) The right of a secured creditor to collect under subsection (1) to (4) is subject to **sections 77 to 86.**

**Collection of receivable by transferee** **of receivable**

**98.** (1) [Subject to **sections 77 to 86,]** in the case of a transfer of a receivable by agreement, the transferee may collect the receivable after payment becomes due.

(2) A transferee exercising the right to collect under subsection (1) may enforce a personal or property right that secures or supports payment of the receivable.

(3) The right of a transferee to collect under subsection (1) and (2) is subject to **sections 77 to 86.**

**PART VII**

**APPLICABLE LAWS**

**Choice of law by grantor and secured creditor**

**99.** The law applicable to the mutual rights and obligations of the grantor and the secured creditor arising from their security agreement is the law chosen by them and, in the absence of a choice of law, the law governing the security agreement.

**Law applicable to security interest in tangible** **property**

**100.**(1) Except as provided under subsections (2) to (4) and **section 115**, the law applicable to the creation, effectiveness against third parties and priority of a security interest in a tangible property is the law of the State in which the tangible property is located.

(2) The law applicable to the priority of a security interest in a tangible property covered by a document of title made effective against third parties by possession of the document of title as against the right of a competing claimant is the law of the State in which the document of title is located.

(3) The law applicable to the creation, third-party effectiveness and priority of a security interest in a tangible property of a type ordinarily used in more than one State is the law of the State in which the grantor is located.

(4) A security interest in a tangible property that is in transit at the time of its putative creation or intended to be relocated to a State other than the State in which it is located at that time may also be created and made effective against third parties under the law of the State of the ultimate destination of the property, if the property reaches that State within [thirty] days after the time of the putative creation of the security interest.

**Law applicable to security interest in intangible property**

**101.** Except as provided in **sections 102 and 112 to** **115,** the law applicable to the creation, effectiveness against third parties and priority of a security interest in an intangible property is the law of the State in which the grantor is located.

**Law applicable to security interest in receivable relating to immovable property**

**102.** Despite **section 101**, in the case of a security interest in a receivable that either arises from the sale or lease of immovable property or is secured by immovable property, the law applicable to the priority of the security interest in the receivable as against the right of a competing claimant that is registrable in the immovable property registry in which interests in the relevant immovable may be registered is the law of the State where the immovable property is located.

**Law applicable to enforcement of security interest**

**103.** The law applicable to issues relating to the enforcement of a security interest is the law applicable to the mutual rights and obligations of the grantor and the secured creditor arising from their security agreement, but the secured creditor may not obtain possession of a tangible encumbered property in a manner not permitted under the law of the State in which the encumbered property is located.

**Law applicable to security interest in proceeds**

**104.** (1) The law applicable to the creation of a security interest in proceeds is the law applicable to the creation of the security interest in the original encumbered property from which the proceeds arose.

(2) The law applicable to the third-party effectiveness and priority of a security interest in proceeds is the law applicable to the third-party effectiveness and priority of a security interest in an original encumbered property of the same kind as the proceeds.

**Meaning of “location” of the grantor**

**105.** For the purposes of this Part, the grantor is located ⎯

*(a)* in the State in which the grantor’s sole place of business is located;

*(b)* if the grantor has a place of business in more than one State, in the State in which the central administration of the business of the grantor is exercised; and

*(c)* if the grantor does not have a place of business, in the State in which the grantor has his or her habitual residence.

**Relevant time for determining location**

**106.** (1) Except as provided under subsection (2), references to the location of the encumbered property or of the grantor in the provisions of this Part refer ⎯

*(a)* for creation issues, to the location at the time of the putative creation of the security interest; and

*(b)* for third-party effectiveness and priority issues, to the location at the time at which the issue arises or is relevant.

(2) If the right of a secured creditor in an encumbered property is created and made effective against third parties and the rights of all competing claimants are established before a change in the location of the property or the grantor, a reference in this Part to the location of the encumbered property or of the grantor is, with respect to third-party effectiveness and a priority issue, to the location before the change in location.

**Exclusion of *renvoi***

**107.** A reference in this Part to “the law” of a State as the law applicable to an issue is to the law in force in that State other than its laws governing conflict of laws.

**Application of laws of Saint Lucia on grounds of** **public policy**

**108.** (1) This Part does not prevent the Court from applying an overriding mandatory provision of the law of Saint Lucia that applies notwithstanding the law applicable under the provisions of this Part.

(2) The Court may exclude the application of a provision of the law applicable under this Part only if and to the extent that the result of its application would be manifestly incompatible with fundamental notions of public policy of Saint Lucia.

(3) This section does not prevent an arbitral tribunal from applying or taking into account public policy (*ordre public*), or from applying or taking into account an overriding mandatory provision of a law other than the law applicable under this Part, if the arbitral tribunal is required or entitled to do so.

(4) This section does not permit the Court to displace the provisions of this Part dealing with the law applicable to the third-party effectiveness and priority of a security interest.

**Effect of commencement of insolvency proceedings**

**109.** The commencement of insolvency proceedings in respect of the grantor does not displace the law applicable to a security interest under this Part.

**Applicable law of State with one or more territorial units**

**110.** If the law applicable to an issue is the law of a State that comprises one or more territorial units each of which has its own rules of law in respect of that issue ⎯

*(a)* any reference in this Part to the law of a State means the law in force in the relevant territorial unit; and

*(b)* the internal conflict-of-laws provisions of that State, or in the absence of such provisions, of that territorial unit determine the relevant territorial unit whose substantive law is to apply.

**Law applicable to debtor,** **obligor, issuer and secured creditor**

**111.** The law governing the rights and obligations between a debtor of a receivable, an obligor under a negotiable instrument or an issuer of a document of title and the grantor of a security interest in that type of movable property also is the law applicable to ⎯

*(a)* the rights and obligations between the secured creditor and the debtor, obligor or issuer;

*(b)* the conditions under which the security interest may be invoked against the debtor, obligor or issuer, including whether an agreement limiting the right of the grantor to create a security interest may be asserted by the debtor, obligor or issuer; and

*(c)* determining whether the obligations of the debtor, obligor or issuer have been discharged.

**Law applicable to security interests in funds credited to a deposit account**

**112.** (1) Subject to **section 113**, the law applicable to the creation, effectiveness against third parties, priority and enforcement of a security interest in funds credited to a deposit account, as well as to the rights and obligations between the financial institution and the secured creditor, is the law of the State in which the financial institution maintaining the account has its place of business.

(2) If the financial institution has places of business in more than one State, the law applicable is the law of the State in which the office maintaining the deposit account is located.

**Law applicable to third-party effectiveness of a security interest in certain types of movable property by registration**

**113.** If the law of the State in which a grantor is located recognises registration of a notice as a method for achieving effectiveness against third parties of a security interest in a negotiable instrument, document of title, funds credited to a deposit account or certificated non-intermediated security, the law of that State also is the law applicable to the third-party effectiveness of the security interest in that negotiable instrument, document of title, those funds credited to a deposit account or that certificated non-intermediated security by registration.

**Law applicable to security interests in intellectual property rights**

**114.** (1) Subject to subsection (2), the law applicable to the creation, effectiveness against third parties and priority of a security interest in intellectual property rights is the law of the State in which the intellectual property is protected.

(2) A security interest in intellectual propertyrights may be created under the law of the State in which the grantor is located and may be made effective under that law against third parties other than another secured creditor, a transferee or a licensee.

(3) The law applicable to the enforcement of a security interest in intellectual property rights is the law of the State in which the grantor is located.

**Law applicable to security interests in non-intermediated securities**

**115.** (1) The law applicable to the creation, effectiveness against third parties, priority and enforcement of a security interest in non-intermediated securities other than debt securities, as well as to its effectiveness against the issuer, is the law under which the issuer is constituted.

(2) The law applicable to the creation, effectiveness against third parties, priority and enforcement of a security interest in non-intermediated securities that are debt securities, as well as to its effectiveness against the issuer, is the law governing the debt securities.

**PART VIII**

**MISCELLANEOUS**

**Regulations**

**116.** (1)The Minister may make Regulations for giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Minister may make regulations for —

*(a)* the form of identification required by an identifier of the grantor and identifier of the secured creditor;

*(b)* information required for a statistical purpose;

*[(c)* the acquisition price above which an acquisition security interest in consumer goods is not automatically effective against third parties under section 25;

*(d)* the period of effectiveness of a notice;

*(e)* the conduct of the business of the Registry and the maintenance of the Registry records including the period for which records of entries are to be retained;

*(f)* the payment of fees in respect of a matter under Part III including which fees are payable, the amount and the mode of payment of the fees;

*(g)* the form of a registration notice, amendment notice, continuation notice and termination notice, and of [all] other notices or forms required under this Act to be registered in, or issued by, the Registry;

*(h)* the contents and manner of submission of an initial notice, amendment notice and cancellation notice;

*(i)* the form and method of disclosure of search results;

*(j)* the form of a notification required to be given to a person by the Registry under this Act**;**

*(k)* subject to affirmative resolution, provisions for the protection of consumers in respect of a specified category of movable property capable of being subject to a security interest;

*(l)* the provision of copies of a notice registered in the Registry and the certification of the copies; or

*(m)* any other matter in relation to the Registry.

**Repeal, savings and consequential amendments**

**117.** (1) The [ ] Act, Cap [ ] is repealed.

(2) Notwithstanding subsection (1) ⎯

*(a)* a Regulation, Order, Notice or other subsidiary legislation made under the [Act] shall if in force at the commencement of this Act continue in force until replaced by a Regulation, Order or Notice or other subsidiary legislation made under this Act;

*(b)* an act decision or other matter carried out under the [Act] shall be deemed to have been carried out under this Act; and

*(c)* [subject to **section 118**, an action, proceedings and a similar matter commenced or pending under the [Act] shall continue under this Act as if it had been commenced under this Act.]

(3) The laws set out in the Schedule are amended as indicated in that Schedule.

(4) In the case of conflict between this Act and other law of Saint Lucia, this Act shall prevail.

**Transition**

**118.** (1) Except as provided in this clause, this Act applies to a security interest, including a former security interest, within its scope, and the former law does not apply to a security interest, including a former security interest, within the scope of this Act.

(2) Subject to subsection (2), the former law applies to a matter that is the subject of proceedings before a court or arbitral tribunal commenced before the commencement date of this Act.

(3) If enforcement of a former security interest has begun before the commencement date of this Act, enforcement may continue under the former law or may proceed under this Act. [If, under former law, the secured creditor of a former security interest, upon default, could obtain possession of an encumbered property after default without application to the Court, even without the grantor having consented in writing to such action, the secured creditor may do so under this Act with respect to such former security interest.]

(4) A former security interest remains effective between the parties notwithstanding that its creation does not comply with the creation requirements of this Act.

(5) A former security interest that was effective against third parties on the commencement date of this Act under the former law continues to be effective against third parties under this Act until the earlier of ⎯

*(a)* the time it would have ceased to be effective against third parties under the former law; or

*(b)* the expiration of five years after the commencement date of this Act.

(6) If the third-party effectiveness requirements of this Act are satisfied before the third-party effectiveness of a security interest ceases under subsection (4), the security interest continues to be effective against third parties under this Act from the time when it was made effective against third parties under the former law.

(7) If the third-party effectiveness requirements of this Act are not satisfied before the third-party effectiveness of a security interest ceases under subsection (4), the security interest is effective against third parties only from the time it is made effective against third parties under this Act.

(7) A written agreement between a grantor and a secured creditor creating a former security interest is sufficient to constitute authorisation by the grantor for the registration of a notice covering the movable properties described in that agreement under this Act.

(8) If a security interest under subsection (5) was made effective against third parties by the registration of a notice under the former law, the time of registration under the former law is the time to be used for the purposes of applying the priority rules of this Act that refer to the time of registration of a notice of a security interest.

(9) The priority of a security interest as against the rights of a competing claimant is determined by the former law if ⎯

*(a)* the security interest and the rights of a competing claimant arose before the commencement date of this Act; and

*(b)* the priority status of none of these rights has changed since the commencement date of this Act.

(10) For the purposes of subsection (9) *(b)*, the priority status of a security interest has changed only if ⎯

*(a)* it was effective against third parties on the commencement date of this Act but ceased to be effective against third parties; or

*(b)* it was not effective against third parties under the former law on the commencement date of this Act, and subsequently became effective against third parties under this Act.

Passed in the House of Assembly this day of 20[ ].

Speaker.

Passed in the Senate this day of 20[ ].

President.

**SCHEDULE**

The enactments specified in the second column of the Schedule are amended, in the provisions specified in the third column and in the manner specified in the fourth column, respectively.

|  |  |  |  |
| --- | --- | --- | --- |
| **NO** | **ENACTMENT** | **SECTION** | **AMENDMENT**  |
| 1 | Agricultural Credit Act, Cap 7.02 |  |  |
| 2 | Bills of Sale Act, Cap 13.06 |  |  |
| 3 | Civil Code, Cap 4.01  |  |  |
| 4 | Code of Civil Procedure, Cap 243 |  |  |
| 5 | Commercial Code, Cap 244, Title VII, Bill of Exchange  |  |  |
| 6 | Commercial Code, Cap 244, Title VI, Sale of Goods |  |  |
| 7 | Companies Act, Cap 13.01 |  |  |
| 8 | Consumer Credit Act, 2006, No 29 of 2006  |  |  |
| 9 | Land Registration Act, Cap 5.01  |  |  |
| 10 | Stamp Duty Act, Cap 15.11 |  |  |
| 11 | Sale of Produce Act, Cap 7.04 |  |  |
|  |  |  |  |