



Consultative Document
on the proposed
Movable Property Security Interest (MPSI) Bill

14 October 2021

Companies Commission of Malaysia (SSM) invites comments on the **proposed Movable property Security Interest (MPSI) Bill** as set out in this Consultative Document.

Please provide your name and the organisation you represent (where applicable) together with your comments.

We welcome comments to be submitted by email by 12 November 2021 to lrpia@ssm.com.my or any enquiries on this consultation to 03-22994734.

Confidentiality: Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.

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SECTION A

OBJECTIVE AND BACKGROUND

Consultative Document on the proposed Movable Property Security Interest (MPSI) Bill

OBJECTIVE

This Consultative Document seeks feedback from the public on the introduction of the proposed Movable Property Security Interest (MPSI) Bill for Malaysia.

BACKGROUND

1. The MPSI Bill was proposed to be introduced following the gaps identified by the World Bank in the Doing Business Report 2015 under the following areas for the Getting Credit indicator:

- (i) the absence of an integrated or unified legal framework for movable assets that are used as collateral for a loan or an obligation; and
- (ii) the lack of a unified collateral registry in operation for both incorporated and unincorporated entities.

2. To understand the gaps, a joint study was conducted by Bank Negara Malaysia and Companies Commission of Malaysia (SSM) in 2015. The study confirmed the World Bank's findings and highlighted that the introduction of the new legal framework will greatly benefit the business sector, particularly the SMEs. Through a decision made in PEMUDAH Meeting No. 1/2016 on 19 January 2016, SSM was given the mandate to undertake the registry function under the proposed framework and introduce the legal framework.

3. SSM issued a Consultative Document on 8 September 2017 for feedbacks from the public on the proposed principles of secured transaction and legal framework for the MPSI Bill. A copy of the

Consultative Document can be downloaded for reference from SSM's website¹.

4. Thereafter, the Task Force and Working Committee was established comprising the following stakeholders: -

- (a) Ministry of Domestic Trade and Consumer Affairs (KPDNHEP);
- (b) Ministry of Transport (MOT);
- (c) Kementerian Tenaga dan Sumber Asli;
- (d) Jabatan Ketua Pengarah Tanah & Galian Persekutuan (JKPTG);
- (e) Bank Negara Malaysia (BNM);
- (f) Road Transport Department of Malaysia (JPJ);
- (g) Malaysian Department of Insolvency (MDI);
- (h) Intellectual Property Corporation of Malaysia (MyIPO);
- (i) The Malaysian Bar;
- (j) The Association of Banks in Malaysia (ABM);
- (k) The Association of Development Finance Institutions of Malaysia (ADFIM);
- (l) Association of Islamic Banking Institutions Malaysia (AIBIM);
- (m) Malaysian Investment Banking Association (MIBA);
- (n) Attorney General's Chambers of Malaysia (AGC); and
- (o) Two (2) representatives from the legal fraternity i.e. representatives from Messrs. Wong Beh & Toh and Messrs. Shearn Delamore & Co.

5. The Final Report from the MPSI Task Force was presented on 11 December 2018 which concluded twenty-three (23) recommendations for the foundation of the MPSI Bill based on the deliberations reflective of the need, practice and operations of the

¹ https://www.ssm.com.my/Pages/Legal_Framework/Public-Consultant-pdf/konsultasi_awam_ppsr.pdf

business community in Malaysia. These recommendations are attached here as Annexure "A".

6. Further discussions were held in 2019 and 2020 for further refinements of the recommendations with targeted stakeholders.

7. On 17 February 2021, the recommendations was tabled to the Cabinet and the Cabinet endorsed for the introduction of the MPSI Bill for Malaysia based on the recommendations and for Companies Commission of Malaysia to be the regulatory agency for the MPSI Bill.

The Proposed Legal Framework

8. The Movable Property Security Interest Bill ("the Bill") will introduce a legal framework which will regulate the process of creation, registration and enforcement of security interests for movable property in Malaysia.

9. The legal framework will provide a platform, especially for MSMEs that require funds to carry out their business operations, where movable property can be effectively used as collateral to secure a loan or other performance of an obligation.

10. The legal framework will provide for security interest in all movable property. Examples of properties or collateral types that will be covered under the proposed Bill are motor vehicles, crops (e.g. fruit production, wheat production), livestock (e.g. cows, sheep), documents of title (e.g. bills of lading, warehouse receipts), negotiable instruments (e.g. promissory notes, letters of credit); money (e.g. a bank deposit of RM8 million lodged with a bank, Japanese yen, New Zealand dollars) and intangibles (e.g. accounts receivable, copyright, patents, trademarks).

11. The Bill would establish a registration framework which would enable the following functions:

- (i) provide information to persons who are thinking of extending secured lending, credit rating agencies and potential investors on the extent to which assets that may appear to be owned by the company are in fact subject to securities in favour of other parties; and
- (ii) determine the priority among the secured interests.

12. In addition, the legal framework would incorporate the following:

- (i) Introduce an electronic registration filing system (notice-filing) with searching to be allowed via online.
- (ii) Allow registration of security interests of collaterals (movable and immovable) provided by all types of entities i.e. incorporated or unincorporated.
- (iii) Set out clear and precise rules on priority of competing security interests.
- (iv) Registration of the security interests by secured parties would be made simpler and using electronic format.

13. The many benefits from having a secured transaction legal framework are as follows:

- (i) Increase in access to credit and reducing the risk of credit (reduction of cost in obtaining credit) especially for unincorporated entities/MSMEs;
- (ii) Addresses the lack of adequate legal framework on the registration of moveable properties for unincorporated entities e.g. restriction on types of assets, lack of clear creditor priority and enforcement issues;
- (iii) Address the lack of know-how on moveable asset lending for unincorporated entities e.g. staffs with skills;

- (iv) Diversification of assets held by financial institutions to spread risks more efficiently;
- (v) Possibility of monetization of intangible assets to form collaterals (e.g. intellectual property rights); and
- (vi) Unified registry for moveable and immoveable assets for both incorporated and unincorporated entities facilitates ease of public information and provides services relating to the registration of security transactions under one roof.

14. Following one of the recommendations under the Final Report, the introduction of the MPSI Bill would also impact several legislations as follows:

- (a) the Companies Act 2016 [Act 777];
- (b) the Sale of Goods Act 1957 [Act 382];
- (c) Hire Purchase Act 1967; and
- (d) Bills of Sale Act 1950 [Act 268], Bills of Sale Ordinance (Sarawak Cap. 68) and Bills of Sale Ordinance (Sabah Cap. 14).

INVITATION TO COMMENT

15. The public is invited to comment (to lrpia@ssm.com.my) on the proposed Movable Property Security Interest Bill (under Section B) before or by 12 November 2021.

SECTION B

**THE PROPOSED MOVABLE PROPERTY SECURITY INTEREST
BILL**

LAWS OF MALAYSIA

ACT XXX

MOVABLE PROPERTY SECURITY INTEREST BILL 2022

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LAWS OF MALAYSIA

ACT XXX

MOVABLE PROPERTY SECURITY INTEREST BILL 2022

An Act to provide for the creation, perfection, registration, priority and enforcement of security interests in movable property both in conventional and shariah transactions and to provide for related matters.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I PRELIMINARY

Short Title and commencement

1. (1) This Act may be cited as the Movable Property Security Interest Act 2022.
(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Interpretation

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

“accessions” means goods that are installed in, or affixed to, other goods in such a manner that the identity of the goods is not lost;

“account receivable” means a monetary obligation that is not evidenced by chattel paper or by a negotiable instrument, whether or not that obligation has been earned by performance;

“advance”—

(a) means the payment of money, the provision of credit, or the giving of value; and

(b) includes any liability of the debtor or grantor to pay interest, credit costs, and other charges or costs payable by the debtor or grantor in connection with an advance or the enforcement of a security interest securing the advance;

“after-acquired property” means movable property that is acquired by a debtor or grantor after the security agreement is made;

“building” means means a structure or erection that is built or constructed on or opened in land;

“building materials” means materials that are incorporated into a building, and includes goods attached to a building so that their removal:

- (i) would necessarily involve the dislocation or destruction of some other part of the building and cause substantial damage to the building, apart from the loss of value of the building resulting from the removal; or
- (ii) would result in weakening the structure of the building or exposing the building to weather damage or deterioration;

but does not include:

- (iii) heating, air conditioning or conveyancing devices; or
- (iv) machinery installed in a building or on land for use in carrying on an activity in the building or on the land; or
- (v) fixture;

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

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

“collateral” means movable property that is subject to a security interest;

“commercial consignment” means a transaction regardless of the form or terminology used in the contract, in which a person (the “consignor”) delivers goods for the purpose of sale to a merchant (the “consignee”) who deals in goods of that kind under a name other than that of the consignor and who is not an auctioneer

“commingled goods” means goods that are physically united with other goods in a way that their identity is lost in a product or mass;

“Commission” means the Companies Commission of Malaysia established under the Companies Commission of Malaysia Act 2001 [*Act 614*];

“corresponding previous written law” means any written law relating to incorporated company which has been at any time in force in any part of Malaysia and which corresponds with any provision of this Act;

“Court” means the High Court or a judge of the High Court;

“crops” means crops, whether matured or otherwise, and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land; and includes trees only if the trees are grown for commercial and sale purposes;

“debtor” means a person that owes payment or other performance of a secured obligation, whether or not the person owns or has rights in the collateral, and includes a seller of accounts or secured sales contracts, and a lessee of goods;

“default” means —

- (a) the failure to pay or otherwise perform the obligation secured when due; or
- (b) the occurrence of an event that, under the security agreement, gives the secured party the right to enforce the security

“document” has the meaning assigned to it in the Evidence Act 1950 [Act 56];

“document of title” means a writing issued by or addressed to a bailee —

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

“equipment” means goods that are held by a debtor or grantor other than as inventory, crops or livestock;

“financing change statement” means the data required or authorized by this Act or the regulations to be entered in the register to renew, discharge, or otherwise amend a financing statement;

“financing statement” means the data required or authorised by this Act or the regulations to be entered in the register to effect a registration for the purposes of perfecting a security interest in collateral under this Act; and includes a financing change statement (if the context permits);

“fixture”

(a) means goods that are fixed or are intended to become fixed to immovable property in a manner that causes a property right to arise in the goods; and

(b) does not include building materials, readily removable factory machines, office machines,

and domestic appliances;

“future advance” means the payment of money, the provision of credit, or the giving of value secured by a security interest, occurring after the security agreement has been signed, whether or not provided or given under an obligation; and includes advances, reasonable costs incurred, and expenditures made for the protection, maintenance, preservation, or repair of the collateral, or for the enforcement of the security interest

“goods” means tangible movable property other than chattel paper, a document of title, a negotiable instrument, securities or money and includes fixtures, crops, livestock including the unborn, trees that have been severed, and petroleum or minerals that have been extracted;

“grantor” means a person that creates a security right to secure either its own obligation or that of another person;

“intangible” means movable property other than chattel paper, a document of title, goods, securities, money, or a negotiable instrument;

“inventory” means goods that are—

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

(b) to be provided or have been provided under a contract for services; or

(c) raw materials or work in progress; or

(d) materials used or consumed in a business;

“land” includes-

- (a) the surface of the earth and all substances forming that surface;
- (b) the earth below the surface and all substances therein; and
- (c) land covered by water;

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

- (a) means a lease or bailment of goods for a term of more than twelve months;
and
- (b) includes—
 - (i) a lease for an indefinite term, including a lease for an indefinite term that is determinable by one or both parties not later than twelve months after the date of its execution; and
 - (ii) a lease for a term of twelve months or less that is automatically renewable or that is renewable at the option of one of the parties for one or more terms, where the total of the terms, including the original term, may exceed twelve months; and
 - (iii) a lease for a term of twelve months or less where the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for a period of more than twelve months after the day on which the lessee first acquired possession of them, but the lease does not become a lease for a term of more than twelve months until the lessee’s possession extends for more than twelve months; but
- (c) does not include—
 - (i) a lease by a lessor who is not regularly engaged in the business of leasing goods; or
 - (ii) a lease of household furnishings or appliances as part of a lease of land where the use of the goods is incidental to the use and enjoyment of the land; or
 - (iii) a lease of prescribed goods, regardless of the length of the lease term

“Minister” means the Minister charged with the responsibilities for the registration of security interest relating to movable property;

“money” means currency authorised as a medium of exchange by the law of Malaysia or of any other country;

“movable property” means goods, chattel paper, documents of title, intangibles, securities, money, and negotiable instruments, and includes fixtures but does not include building materials that have been affixed to real property;

“negotiable instrument” means –

- (a) a bill of exchange or promissory note within the meaning of the Bills of Exchange Act 1949 [*Act 204*]; or
- (b) any other writing that evidences a right to payment of money and is of a kind that, in the ordinary course of business, is transferred by delivery with any necessary endorsement;

but does not include chattel paper, document of title or securities;

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

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

less any amount paid before the determination.

“perfected security interest” means the security interest is perfected by possession or by registration or is temporarily perfected, as the case may be;

“possession” in relation to a secured party, means possession of a collateral that is in the actual or apparent possession of the debtor or grantor or the debtor’s or grantor’s agent;

“proceeds” means identifiable or traceable movable property, fixtures and crops -

- (a) that is derived directly or indirectly from a dealing with collateral or the proceeds of collateral and in which the debtor or grantor acquires an interest; and
- (b) includes:
 - (i) a right to an insurance payment or other payment as indemnity or compensation for loss of or damage to the collateral or proceeds; and
 - (ii) a payment made in total or partial discharge or redemption of an intangible or securities or a negotiable instrument; but

does not include animals merely because they are the offspring of the animals that are collateral;

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

“purchase money security interest” means

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

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

“purchase price” and “value”, in relation to a purchase money security interest, include credit charges and interest payable for the purchase or loan credit;

“Registrar” means the Registrar designated under subsection 20A(1) of the Companies Commission of Malaysia Act 2001 [*Act 614*];

“Registry” means the movable property registry established under this Act;

“regulations” means regulations made under this Act;

“secured party” –

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

“securities” means securities as defined under the Capital Markets and Services Act 2007 [*Act 671*]

“security agreement” –

- (a) means an agreement that creates or provides for a security interest; and
- (b) includes a writing that evidences a security agreement;

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

“this Act” includes any subsidiary legislation made under this Act;

“value” –

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

Application and exception

3. (1) This Act applies:

- (a) to every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral; and
- (b) without limiting the generality of paragraph (a), to conditional sale agreements (including agreements to sell subject to retention of title), fixed charge, floating charge, hire purchase agreement, security trust deed, trust receipt, or to an assignment, consignment, lease, that secures payment or performance of an obligation.

(2) Subject to subsection (1), this Act applies to a transfer of an account or chattel paper, to a lease for a term of more than twelve months and to a commercial consignment, that does not secure payment or performance of an obligation.

(3) This Act does not apply to –

- (a) the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of an agent of the seller, unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods;
- (b) a lien, charge or other interest given by statute or rule of law;
- (c) any aircraft under Civil Aviation 1969 [*Act 3*];
- (d) any ship under the Merchant Shipping Ordinance 1952 [*Ord.70/1952*];
- (e) any pledge under the Pawnbrokers Act 1972 [*Act 81*];

- (f) any credit sale transaction under the Consumer Protection Act 1999 [*Act 599*]
- (g) any securities credited to a central depository under the Capital Markets and Services Act 2007 [*Act 671*];
- (h) an interest created or provided for by any of the following transactions:
 - (i) the creation or transfer of an interest in land;
 - (ii) a transfer of a right to payment that arises in connection with an interest in land, including a transfer of rental payments payable under a lease of or license to occupy land, unless the right to payment is evidenced by any securities;
 - (iii) a transfer of an unearned right to payment under a contract to a person who is to perform the transferor's obligations under the contract;
 - (iv) a transfer of present or future claim to wages, salary, pay, commission, or any other compensation for labour or personal services of an employee;
 - (v) an assignment for the general benefit of creditors of the person making the assignment;
 - (vi) a transfer of an interest or claim in or under a contract of annuity or policy of insurance or takaful, except as provided by this Act with respect to proceeds and priorities in proceeds;
 - (vii) a transfer of a right to damages in tort;
 - (viii) an assignment of accounts receivable made solely to facilitate the collection of the accounts receivable on behalf of the person making the assignment;
 - (ix) an assignment of a single account receivable or negotiable instrument in whole or in partial satisfaction of a pre-existing indebtedness; or
 - (x) a sale of accounts receivable or chattel paper as part of a sale of a business, unless the seller remains in apparent control of the business after the sale.

PART II

CONFLICT OF LAWS

General rules

4. (1) Subject to section 5 and 6, the validity of the security interest in goods or a possessory security interest in a negotiable instrument, a negotiable document of title, money or chattel paper is governed by the law of the jurisdiction where the collateral is situated when the security interest attaches.

(2) Except as otherwise provided in section 5 and 6, while the collateral is situated in a jurisdiction, perfection, the effect of perfection or non-perfection, and the priority of a security interest described in subsection (1) shall be governed by the law of that jurisdiction.

(3) A security interest in goods that is perfected pursuant to the law of the jurisdiction in which the goods are situated when the security interest attaches and before the goods are brought into Malaysia continues to be perfected in Malaysia if it is perfected in Malaysia:

- (a) not later than sixty days after the day on which the goods are brought into Malaysia;
- (b) not later than fifteen days after the day on which the secured party has knowledge that the goods have been brought into Malaysia; or
- (c) before perfection ceases pursuant to the previously applicable law; whichever is earliest, but the security interest is subordinate to the interest of a buyer or lessee of the goods who acquires the interest without knowledge of the security interest and before it is perfected in Malaysia pursuant to clause 10(1).

(4) A security interest that is not perfected as provided in subsection (3) may be otherwise perfected in Malaysia pursuant to this Act.

Goods removed from jurisdiction

5. (1) Subject to section 6, where the parties to a security agreement that creates a security interest in goods in one jurisdiction understand at the time when the security interest attaches that the goods will be kept in another jurisdiction and the goods are removed to the jurisdiction, for purposes other than transportation through the other jurisdiction, within thirty days after the security interest attaches, the security interest:

- (a) is valid if it is valid pursuant to either the law of the jurisdiction where the goods are located when the security interest attaches or the law of the other jurisdiction; and
- (b) may be perfected pursuant to the law of either jurisdiction.

(2) If a security interest mentioned in subsection (1) is perfected in accordance with the law of the jurisdiction to which the goods are removed, the effect of perfection and the priority of the security interest are governed by that law:

- (a) before the goods are removed to that jurisdiction; and
- (b) while the goods are located in that jurisdiction.

Validity, perfection, etc of security interest in intangibles, movable equipment, etc

6. (1) The validity, perfection, the effect of perfection or non-perfection of

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

are governed by the law, including the conflict of law rules, of the jurisdiction where the debtor or grantor is located when the security interest attaches.

(2) Where a debtor or grantor relocates to another jurisdiction or transfers an interest in the collateral to a person located in another jurisdiction, a security interest

perfected in accordance with the law applicable as provided in subsection (1) continues perfected pursuant in Malaysia if it is perfected in the other jurisdiction:

- (a) not later than sixty days after the day on which the debtor or grantor relocates or transfers an interest in the collateral to a person located in the other jurisdiction;
 - (b) not later than fifteen days after the day on which the secured party has knowledge that the debtor or grantor has relocated or transferred an interest in the collateral to a person located in the other jurisdiction; or
 - (c) prior to the day on which perfection ceases pursuant to the law of the first jurisdiction.
- (3) For the purposes of this section-
- (a) a debtor or grantor that is body corporate is located in the country of incorporation of the body corporate; and
 - (b) a debtor or grantor that is not body corporate is located at the debtor's or grantor's place of business, the debtor's or grantor's principal place of business (if the debtor has more than one place of business) or the debtor's or grantor's principal residence (if the debtor or grantor has no place of business).

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

7. (1) If the law governing the perfection of a security interest referred to in section 6 does not provide for public registration or recording of the security interest or a notice relating to it, and the collateral is not in the possession of the secured party, the security interest is subordinate to—

- (a) an interest in an account receivable that is payable in Malaysia ; or
- (b) an interest in goods, an investment security, a negotiable instrument, a document of title, money, or chattel paper, acquired when the collateral was situated in Malaysia.

(2) Subsection (1) does not apply if the security interest is perfected under this Act before the interest referred to in paragraph 1(a) of that subsection or paragraph 1(b) of that subsection arises.

(3) A security interest to which subsection (1) applies may be perfected under this Act.

PART III SECURITY AGREEMENTS

Effectiveness of security agreement

8. Except as otherwise provided by this Act or any other written law, a security agreement is effective according to its terms.

Attachment of security interests

9. (1) A security interest attaches to collateral and becomes enforceable only if:

- (a) each debtor has signed a security agreement that describes the collateral; and
- (b) value has been given by the secured party; and
- (c) a debtor has rights in the collateral.

(2) Subsection (1) does not apply if the parties to a security agreement have agreed that a security interest attaches at a later time, in which case the security interest attaches at the time specified in the agreement.

(3) For the purposes of subsection (1), a debtor has rights in goods that are leased to the debtor, consigned to the debtor, or sold to the debtor under a conditional sale agreement (including an agreement to sell subject to retention of title) no later than when the debtor obtains possession of the goods.

(4) Unless otherwise agreed, a security interest automatically attaches to proceeds.

(5) To avoid doubt, a reference in a security agreement to a floating charge is not an agreement that the security interest created by the floating charge attaches at a later time than the time specified in subsection (1).

PART IV

PERFECTION OF SECURITY INTERESTS

Perfected of security interest

10. (1) Except as otherwise provided in this Act, a security interest is perfected and is enforceable against a third party when—

- (a) the security interest has attached; and
- (b) either—
 - (i) a financing statement has been registered in respect of the security interest;
or
 - (ii) the secured party or another person on behalf of the secured party has possession of the collateral (except where possession is a result of seizure or repossession).

(2) A security interest in goods, negotiable instrument, document of title, money or chattel paper may be perfected by the secured party's taking possession.

(3) Subsection (1) applies regardless of the order in which attachment and either of the steps referred to in subparagraph (1) (b) occur.

(4) A security interest in money other than cash proceeds, may only be perfected by possession by the secured party or a person acting on behalf of the secured party.

Continuity of perfection

11. A security interest is continuously perfected if –

- (a) the security interest is perfected under this Act; and

- (b) the security interest is subsequently perfected in another way under this Act;
and
- (c) there is no intervening period during which the security interest is unperfected.

PART V

SECURITY INTERESTS IN MOVABLE PROPERTY

Security interests in after-acquired property

12. If a security agreement provides for a security interest in after-acquired property, the security interest attaches in accordance with section 9 without specific appropriation by the debtor or grantor.

Security interests in proceeds

13. (1) Except as otherwise provided in this Act, a security interest in collateral that is dealt with or otherwise gives rise to proceeds—

- (a) continues in the collateral, unless the secured party expressly or impliedly authorised the dealing; and
- (b) extends to the proceeds.

(2) The amount secured by a security interest in collateral and the proceeds is limited to the value of the collateral at the date of the dealing that gave rise to the proceeds if the secured party enforces the security interest against both the collateral and the proceeds.

Continuous perfection of security interests in proceeds

14. A security interest in proceeds is a continuously perfected security interest in proceeds if the security interest in the original collateral is perfected by registration of a financing statement that contains a description of the original collateral, if—

- (a) the proceeds are of a kind that are within the description of the original collateral; or
- (b) the proceeds are cash proceeds; or
- (c) the proceeds consist of a payment made in total or partial discharge or redemption of an intangible, any securities or chattel paper; or
- (d) the proceeds consist of a right to an insurance or takaful payment or any other payment as indemnity or compensation for loss or damage to the collateral or proceeds.

Temporary perfection of security interests in proceeds in other cases

15. A security interest in proceeds is temporarily perfected until the expiration of seven days after the security interest in the original collateral attached to the proceeds, if –

- (a) the security interest in the original collateral is perfected; and
- (b) the security interest in the proceeds is not continuously perfected under section 14.

Temporary perfection of security interests in negotiable instrument

16. A security interest in a negotiable instrument is temporarily perfected until the expiration of seven days after the secured party made the negotiable instrument available to the debtor or grantor, if—

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

Temporary perfection of security interests in documents of title or goods returned to debtor or grantor

17. A security interest in a document of title or goods held by a bailee that are not covered by a document of title is temporarily perfected until the expiration of seven days after the secured party made the document of title or goods available to the debtor or grantor, if—

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

Perfection where goods in hands of bailee

18. A security interest in goods in the possession of a bailee is perfected when the security interest has attached and—

- (a) a financing statement relating to the goods is registered; or
- (b) the security interest in the document of title to the goods is perfected where the bailee has issued a document of title; or
- (c) the bailee being a person who is not the debtor or grantor has issued a document of title in the name of the secured party or holds the goods on behalf of the secured party under section 10.

Security interests in crops

19. (1) Except as otherwise provided in this Act, a security interest may be created and perfected in crops and continue as such before they are planted while growing and afterwards when cut or separated from the soil.

(2) For the purposes of determining whether a security interest in crops cut or separated from the soil exists, it does not matter whether the crops are stored on the land where the crops were grown or on any other land or premises.

(3) No perfected security interest in crops shall be extinguished or prejudicially affected by a subsequent sale, lease, loan or other encumbrance of or on the land which the crops are growing.

PART VI

PRIORITY BETWEEN SECURITY INTERESTS

Priority of security interests generally

Priority of security interests in the same collateral

20. (1) Where the Act does not provide another method for determining priority between security interests in the same collateral –

- (a) a perfected security interest shall have priority over an unperfected security interest in the same collateral;
- (b) priority between perfected security interests shall be determined by the order of whichever of the following first occurs in relation to a particular security interest –
 - (i) the registration of a financing statement;
 - (ii) the secured party, taking possession of the collateral except where possession is a result of seizure or repossession;
 - (iii) the temporary perfection of the security interest in accordance with this Act;
- (c) priority between unperfected security interests in the same collateral shall be determined by the order of attachment or creation of the security interests.

(2) For the purposes of subsection (1), a continuously perfected security interest is to be treated at all times as perfected by the method by which it was originally perfected.

(3) For the purpose of subsection (1), the time of registration, possession, or perfection of a security interest in original collateral is also the time of registration, possession, or perfection of its proceeds.

(4) Where:

(a) registration of security interest:

- (i) lapses as a result of a failure to renew the registration;
- (ii) is discharged without authorization or in error; and

(b) the secured party registers the security interest not later than thirty days after the lapse or discharge,

the lapse or discharge does not affect the priority status of the security interest in relation to a competing perfected security interest that, immediately prior to the lapse or discharge, had a subordinate priority position, except to the extent that the competing security interest secures advances made or contracted for after the lapse or discharge and prior to the re-registration.

Transfer of security interests does not affect priority

21. A security interest that is transferred shall have the same priority as it had at the time of the transfer.

Voluntary subordination of security interests

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

(2) A secured party may, in a security agreement or otherwise, subordinate the secured party's security interest to any other interest, and the subordination is effective according to its terms between the parties and may be enforced by a third party if the

third party is the person or one of a class of persons for whose benefit the subordination was intended.

(3) An agreement or undertaking to postpone or subordinate:

- (a) the right of a person to performance of all or any part of an obligation to the right of another person to the performance of all or any part of another obligation of the same debtor or grantor; or
- (b) all or any part of the rights of a secured party pursuant to a security agreement to all or any part of the rights of another secured party pursuant to another security agreement with the same debtor or grantor;

does not, by virtue of the postponement or subordination alone, create a security interest.

Account debtor

23. (1) In this section:

- (a) “**account debtor**” means a person who is obligated pursuant to an account receivable or chattel paper;
- (b) “**assignee**” includes a secured party who has a security interest in an account receivable or chattel paper as original collateral or as proceeds, and a receiver.

(2) An account debtor who has not made an enforceable agreement not to assert defences arising out of the contract between the account debtor and the assignor may set up by way of defence against the assignee --

- (a) all defences available to the account debtor against the assignor arising out of the terms of the contract or a related contract, including equitable set-off and misrepresentation; and
- (b) the right to set off any debt owing to the account debtor by the assignor that was payable to the account debtor before the account debtor received notice of the assignment.

(3) An account debtor may pay the assignor until the account debtor receives notice, reasonably identifying the relevant rights, that the account receivable or chattel

paper has been assigned, and, if requested by the account debtor, the assignee shall furnish proof within a reasonable time that the assignment has been made, and, if the assignee does not do so, the account debtor may pay the assignor.

(4) To the extent that the right to payment or part payment under an assigned contract has not been earned by performance, and despite notice of the assignment, any modification of or substitution for the contract, made in good faith and in accordance with reasonable commercial standards and without material adverse effect upon the assignee's right under or the assignor's ability to perform the contract, is effective against an assignee unless the account debtor has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract.

(5) A term in the contract between the account debtor and the assignor that prohibits or restricts the assignment of, or the giving of a security interest in, the whole of the account or chattel paper for money due or to become due or that requires the account debtor's consent to such assignment or such giving of a security interest,

- (a) is binding on the assignor only to the extent of making the assignor liable to the account debtor for breach of their contract; and
- (b) is unenforceable against third parties.

Priority of advances

Priority of security interests to all advances

24. (1) A security agreement may provide for future advances.

(2) A security interest shall have the same priority in respect of all advances, including future advances.

Priority of purchase money security interests

Priority of purchase money security interest in collateral or its proceeds

25. A purchase money security interest in collateral or its proceeds, other than inventory or intangibles, has priority over a non-purchase money security interest in the same collateral given by the same debtor or grantor if the purchase money security interest in the collateral or its proceeds is perfected not later than fourteen days after the day on which the debtor or grantor, or another person at the request of the debtor or grantor, obtained possession of the collateral, whichever is earlier.

Priority of purchase money security interest in other cases

26. (1) A purchase money security interest in inventory or its proceeds has priority over a non-purchase money security interest in the same collateral given by the same debtor or grantor if the purchase money security interest in the inventory or its proceeds is perfected at the time the debtor or grantor, or another person at the request of the debtor or grantor, obtains possession of the collateral, whichever is earlier;

(2) A purchase money security interest in an intangible or its proceeds has priority over a non-purchase money security interest in the same collateral given by the same debtor or grantor if the purchase money security interest in the intangible or its proceeds is perfected not later than fourteen days after the day on which the security interest in the intangible attached.

Non-proceeds security interest in accounts receivable

27. (1) A non-proceeds security interest in accounts receivable that is given for new value has priority over a purchase money security interest in the accounts receivable as proceeds of inventory if a financing statement relating to the security interest in the accounts receivable is registered before the purchase money security interest is perfected or a financing statement relating to it is registered.

(2) In this section-

- (a) “non-proceeds security interest” means a security interest in original collateral; and
- (b) “new value” means value other than antecedent debt or liability;

Priority between purchase money security interests in goods or their proceeds taken by seller, etc

28. A purchase money security interest in goods or their proceeds taken by a seller, lessor, or consignor of the collateral, has priority over any other purchase money security interest in the same collateral given by the same debtor or grantor if the first-mentioned purchase money security interest in the goods or their proceeds is perfected—

- (a) in the case of inventory, at the time the debtor or grantor, or another person at the request of the debtor or grantor, obtained possession of the collateral, whichever is earlier; or
- (b) in the case of collateral, other than inventory, not later than ten working days after the day on which the debtor or grantor, or another person at the request of the debtor or grantor, obtained possession of the collateral, whichever is earlier.

Priority between purchase money security interests in same goods or their proceeds not taken by seller, etc

29. Priority between purchase money security interests in the same goods or their proceeds that have not been taken by a seller, lessor, or consignor, and that have been given by the same debtor or grantor are to be determined in accordance with section 20.

Priority of security interests in accessions

Security interests in accessions

30. (1) A security interest in goods that become an accession continues in the accession.

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

Priority of security interest in goods before they become accessions

31. A security interest in goods that is attached at the time when the goods become an accession has priority over a claim to the goods as an accession made by a person with an interest in the whole.

Priority of security interests in processed or commingled goods

Continuation of security interests in goods that become part of processed or commingled goods

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

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

33. Any priority that a security interest continuing in the product or mass has over another security interest in the product or mass is limited to the value of the goods on the day on which they became part of the product or mass.

Priority where more than one security interest continues in processed or commingled goods

34. (1) A perfected security interest continuing in the product or mass shall have priority over an unperfected security interest continuing in the same product or mass.

(2) If more than one perfected security interest continues in the same product or mass, each perfected security interest is entitled to share in the product or mass according to the ratio that the obligation secured by the perfected security interest bears to the sum of the obligations secured by all perfected security interests in the same product or mass.

(3) If more than one unperfected security interest continues in the same product or mass, each unperfected security interest shall be entitled to share in the product or mass according to the ratio that the obligation secured by the unperfected security interest bears to the sum of the obligations secured by all unperfected security interests in the same product or mass.

(4) For the purposes of this section, the obligation secured by a security interest does not exceed the value of the goods on the day on which the goods became part of the product or mass.

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

35. Notwithstanding section 34, a perfected purchase money security interest in goods that continues in the product or mass has priority over—

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

Priority of security interests in transferred collateral

Rights of debtor or grantor may be transferred

36. (1) The rights of a debtor or grantor in collateral may be transferred consensually or by operation of law despite a provision in the security agreement prohibiting transfer or declaring a transfer to be a default.

(2) No transfer by the debtor or grantor shall prejudice the rights of the secured party under the agreement, including the right to treat a prohibited transfer as an act of default.

(3) In this section, “transfer” includes a sale, the creation of a security interest or a transfer under judgment enforcement proceedings.

General priority of security interests in transferred collateral over security interest granted by transferee

37. (1) If a debtor or grantor transfer an interest in collateral that, at the time of the transfer, is subject to a perfected security interest, that security interest has priority over any other security interest granted by the transferee secures advances made or contracted for-

- (a) after the expiration of fourteen days from the date that the secured party who holds the security interest in the transferred collateral had knowledge of the information required to register a financing change statement disclosing statement the transferee as the new debtor or grantor; and
- (b) before the secured party referred to in paragraph (1)(a) took possession of the collateral or registered a financing change statement disclosing the transferee as the new debtor or grantor.

(2) Subsection(1) does not apply if the transferee acquires the debtor’s or grantor’s interest free of the security interest granted by the debtor or grantor.

Transfer of debtor's or grantor's interest in collateral with prior consent of secured party

38. Notwithstanding section 37, if a security interest is perfected by registration and the debtor or grantor transfers all or part of the debtor's or grantor's interest in the collateral with the prior consent of the secured party, the security interest in the transferred collateral is subordinate to—

- (a) an interest, other than a security interest in the transferred collateral, arising during the period commencing on the expiration of the fifteenth day after the transfer to the time the secured party amended the registration to disclose the name of the transferee of the interest in the collateral as the new debtor or grantor's or took possession of the collateral; and
- (b) a perfected security interest in the transferred collateral that is registered or perfected during the period referred to in paragraph (a); and
- (c) a perfected security interest in the transferred collateral that is registered or perfected after the transfer and before the expiration of the fifteenth day after the transfer if, before the expiration of the fourteen days—
 - (i) the registration of the security interest first referred to in this section is not amended to disclose the transferee of the interest in the collateral as the new debtor or grantor; or
 - (ii) the secured party does not take possession of the collateral.

Transfer of debtor's or grantor's interest in collateral where secured party has knowledge of certain information

39. (1) Notwithstanding section 37, subsection (2) of this section applies where a security interest is perfected by registration and the secured party has knowledge of—

- (a) information required to register a financing change statement disclosing the transferee as the new debtor or grantor, where all or part of the debtor's or grantor's interest in the collateral is transferred; or

- (b) the new name of the debtor or grantor, if there has been a change in the debtor's or grantor's name.
- (2) The security interest, in the transferred collateral where paragraph (1) (a) applies, and in the collateral where paragraph (1) (b) applies, is subordinate to—
- (a) an interest, other than a security interest, in that collateral, arising during the period commencing on the expiration of the fifteenth day after the secured party has knowledge of the information referred to in paragraph (1) (a) or the new name of the debtor or grantor to the time the secured party amends the registration to disclose the name of the transferee as the debtor or grantor, or to disclose the new name of the debtor or grantor, or takes possession of the collateral; and
 - (b) a perfected security interest in the collateral that is registered or perfected in the period referred to in paragraph (a); and
 - (c) a perfected security interest in the collateral that is registered or perfected after the secured party had knowledge of the information referred to in paragraph (1)(a) or the new name of the debtor or grantor and before the expiration of the fifteenth day referred to in paragraph (a), if, before the expiration of the fourteen days,—
 - (i) the registration of the security interest first referred to in this subsection is not amended to disclose the transferee of the collateral as the new debtor or grantor or to disclose the new name of the debtor or grantor; or
 - (ii) the secured party does not take possession of the collateral.

Transfer of debtor's or grantor's interest in collateral without secured party's consent

40. (1) If the debtor's or grantor's interest in part or all of the collateral is transferred by the debtor or grantor without the consent of the secured party and there are one or more subsequent transfers of the collateral without the consent of the secured party

before the secured party acquires knowledge of the name of the most recent transferee of the collateral, the secured party is deemed to have complied with section 39 if the secured party registers a financing statement not later than fourteen days after acquiring knowledge of—

- (a) the name of the most recent transferee of the collateral; and
- (b) the information required to register a financing change statement.

(2) The secured party need not register a financing change statement with respect to any intermediate transferee.

Priority in fixtures

Priority in fixtures

41. (1) A security interest may continue in goods that become fixtures.

(2) Security interest in goods that is attached before the goods became a fixture, has priority as to the fixture over the claim of any person who has an interest in the land to which it is affixed.

(3) Security interest in goods that is attached after the goods became a fixture, has priority as to the fixture over the claim of any person who subsequently acquired an interest in the land, but not over any person who had a registered interest in the land at the time the security interest in the goods attached and who has not consented in writing to the security interest or disclaimed an interest in the fixture.

PART VII

SPECIAL PRIORITY RULES

Lien has priority over security interest relating to same goods

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

- (a) the materials or services relating to the lien were provided in the ordinary course of business;
- (b) the lien has not arisen under any written law that provides that the lien does not have the priority; and
- (c) the person who provided the materials or services did not, at the time the person provided those materials or services, know that the security agreement relating to the security interest contained a provision prohibiting the creation of a lien by the debtor.

Transferee takes money free of security interest

43. A transferee of money takes the money free of a perfected security interest if the transferee took possession and—

- (a) acquired the money without knowledge of the security interest; or
- (b) gave value, whether or not the transferee acquired the money with knowledge that it was subject to the security interest.

Priority of creditor who receives payment of debt

44. (1) A creditor who receives payment of a debt owing by a debtor through a debtor-initiated payment has priority over a security interest in—

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

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

(3) In subsection (1), debtor-initiated payment means a payment made by the debtor through the use of—

- (a) a negotiable instrument; or
- (b) an electronic funds transfer; or

(c) a debit, a transfer order, an authorisation, or a similar written payment mechanism executed by the debtor when the payment was made.

Priority of purchaser of negotiable instrument and document of title

45. (1) The interest of a purchaser of a negotiable instrument and document title shall have priority over a perfected security interest in the negotiable instrument and document title if the purchaser—

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

(2) For the purposes of subsection(1), the purchaser of a negotiable instrument and document title who acquired it under a transaction entered into in the ordinary course of the transferor’s business has knowledge only if the purchaser acquired the interest with knowledge that the transaction is a breach of the security agreement to which the security interest relates.

Judgment creditor has priority over unperfected security interest

46. (1) The interest of a judgment creditor in any collateral shall have priority over any security interest in the same collateral if the security interest is not perfected at the time of execution.

(2) In this section, “time of execution” means—

- (a) if the collateral is seized by or on behalf of a judgment creditor, the time of seizure; or
- (b) in any other case, the time when a garnishee order is served on the person holding some property for or on behalf of the debtor or grantor.

(3) In this section, a judgment creditor does not include a landlord who exercises a right of distress.

Buyer or lessee takes free of security interests

47. (1) For purposes of this section:

- (a) “buyer of goods” includes a person who obtains vested rights in goods pursuant to a contract to which the person is a party, as a consequence of the goods becoming a fixture or an accession to property in which the person has an interest;
- (b) “ordinary course of business of the seller” includes the supply of goods in the ordinary course of business as part of a contract for services and materials;
- (c) “seller” includes a person who supplies goods that become a fixture or an accession pursuant to a contract with a buyer of goods or with a person who is party to a contract with a buyer of goods.

(2) A buyer or lessee of goods sold or leased in the ordinary course of business of the seller or lessor takes free of any perfected or unperfected security interest that is given by the seller or the lessor or that arises pursuant to section 13 or 14 whether or not the buyer or lessee knows of it, unless the buyer or lessee also knows that the sale or lease constitutes a breach of the security agreement pursuant to which the security interest was created.

(3) If goods are sold or leased, the buyer or lessee takes free from any security interest in the goods that is perfected pursuant to section 11 if the goods were not described by serial number entered into the field labelled for the receipt of serial numbers.

(4) A sale or lease mentioned in subsection (2) may be:

- (a) for cash;
- (b) for exchange for other property; or
- (c) on credit,

and includes delivering goods or a document of title pursuant to a pre-existing contract for sale but does not include a transfer as security for, or in total or partial satisfaction of, a money debt or past liability.

(5) A purchaser of a security, other than a secured party, who:

- (a) gives value;
 - (b) does not know that the transaction constitutes a breach of a security agreement granting a security interest in the security to a secured party that does not have control of the security; and
 - (c) obtains control of the security;
- acquires the security free from security interest.

(6) A purchaser mentioned in subsection (5) is not required to determine whether a security interest has been granted in the security or whether the transaction constitutes a breach of a security agreement.

PART VIII REGISTRATION

Registration of financing statements

Person may register financing statement

48. A person may register a financing statement in accordance with this Act and the regulations which shall contain the following particulars –

- (a) if the debtor, grantor or the secured party is an individual, the debtor’s or grantor’s name, address and national registration identity number or passport number;
- (b) if the debtor or grantor is a corporation under the Companies Act 2016 [Act 777] or if the debtor or grantor is a limited liability partnership under the Limited Liability Partnerships Act 2012 [Act 743] –
 - (i) the registered name and address,
 - (ii) the unique number assigned to it on its incorporation or registration.
- (c) if the debtor or grantor is unincorporated or if the debtor or grantor is a business or partnership under the Registration of Businesses Act 1956 [Act 197] –
 - (i) the registered name and address,

- (ii) the unique number assigned to it on its registration.
- (d) a description of the collateral; including its serial number if required by this Act or by the regulations; and
- (e) any other required particulars by the Registrar to be contained in the financing statement.

Registration of financing statement or financing change statement

49. (1) A financing statement or financing change statement shall be registered at the time that a registration number, date and time is assigned to it in the Register.

(2) A financing statement may be registered before or after a security agreement is concluded.

(3) A financing statement may relate to one or more security agreements.

Registration of financing statement not to constitute notice or knowledge

50. Registration of a financing statement is not constructive notice or knowledge of its existence or contents to any person.

Financing statement or financing change statement not registered

51. A financing statement or financing change statement shall not be registered if-

- (a) it is not submitted in the prescribed manner or in a form as the Registrar may determine that enables the information to be entered directly by electronic by electronic means into the Register; and
- (b) the prescribed fee has not been paid to the Registrar.

Verification statement

52. (1) A verification statement shall, as soon as reasonably practicable after a financing statement or financing change statement has been registered, be given to the person who registered the financing statement or financing change statement.

(2) A copy of the verification statement shall be given the debtor or grantor by the secured party who registered a financing statement, or on whose behalf a financing statement has been registered, within fourteen working days after the verification statement is received, unless the debtor or grantor has waived in writing the right to receive it.

Validity of registrations of financing statements

Validity of registration

53. (1) The validity of the registration of a financing statement is not affected by any defect, irregularity, omission or error in the financing statement unless the defect, irregularity, omission or error is seriously false or misleading.

(2) If it is alleged that a defect, irregularity, omission or error is seriously false or misleading, it is not necessary to prove that any person was misled by it.

(3) The failure to include a description of any item or kind of collateral in a financing statement does not affect the validity of the registration in respect of the description of other collateral included in the financing statement.

When financing statement is seriously false or misleading

54. Without limiting the circumstances in which a registration is invalid, a registration is invalid if there is a seriously false or misleading defect, irregularity, omission, or error in—

- (a) the name of any of the debtors or grantors required by section 48 to be included in the financing statement other than a debtor or a grantor who does not own or have rights in the collateral; or
- (b) the serial number of the collateral if the collateral is equipment that is required by any regulations to be described by serial number in a financing statement.

Duration and renewal of registration

Duration of registration

55. (1) Except as otherwise provided in this Act, a registration of a financing statement under this Act shall be valid until the expiration of the term specified in the security agreement.

(2) Subsection (1) does not apply if the registration of the financing statement is discharged or removed before the expiration of the relevant period referred to in that subsection.

Renewal of registration

56. (1) A registration may be renewed by registering a financing change statement at any time before the expiration of period that the registration is effective.

(2) Except as otherwise provided in this Act or in the regulations, the period of time for which a registration of a financing statement is effective is extended until whichever is the earlier of –

- (a) the expiration of the new term specified in the financing change statement;
or
- (b) the expiration of the term specified in the security agreement commencing on the date on which and at the time at which the financing change statement was registered.

(3) Subsection (2) does not apply if the registration of the financing statement has been discharged or removed before the expiration of the relevant period referred to in that subsection.

Registration where security interest is transferred

Registration of transfer of perfected security interests

57. (1) Where a secured party with a registered security interest transfers the security interest or a part of it, a financing change statement may be registered disclosing the transfer.

(2) Where a financing change statement is registered pursuant to subsection (1) and an interest in part of the collateral is transferred, the financing change statement is to contain a description of the collateral in which the interest is transferred.

Registration of financing statement in respect of transfer of security interest not perfected by registration

58. Where a secured party transfers an interest in collateral and the security interest of the secured party is not perfected by registration, a financing statement may be registered in which the transferee is disclosed as the secured party.

Disclosure of transfer of security interest may be registered

59. A financing change statement or financing statement, as the case may be, relating to a transfer of a security interest may be registered before or after the transfer of the security interest.

Transferee of security interest secured party for purposes of Act

60. After registration of a financing change statement disclosing a transfer of security interest, the transferee is the secured party for the purposes of this Part.

Registrations in respect of subordinated security interests

Registration of subordinated security interests

61. Where a security interest has been subordinated by the secured party to the interest of another person, a financing change statement may be registered to disclose the subordination at any time during the period that the registration of the subordinated interest is effective.

Voluntary amendments to registrations

Amendment or discharge of registrations

62. (1) Any amendment to a registration or a discharge of a registration may be effected by the secured party registering a financing change statement at any time before the expiration of period that the registration is effective, even if an amendment or discharge of the registration is not specifically provided for in this Act.

(2) Any amendment to a registration is only effective from the time that the financing change statement is registered to the expiry of the registration being amended.

Compulsory discharge or amendment of registration

Debtor or grantor may demand registration of financing change statement

63. (1) The debtor, grantor or any person with an interest in property that falls within the collateral description included in a registered financing statement may give a written demand to the secured party to amend or discharge the registration where –

- (a) all of the obligations under the security agreement to which the financing statement relates have been performed;

- (b) the secured party has agreed to release part or all of the collateral described in the collateral description included in the financing statement;
- (c) the collateral described in the collateral description included in the financing statement includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor or grantor;
- (d) no security agreement exists between the parties; and
- (e) the security interest is extinguished in accordance with this Act.

(2) On receipt of the demand submitted under subsection (1), the secured party shall register, within fourteen working days, a financing change statement—

- (a) discharging the registration with respect to matters described in subsection (1)(a), (d) or (e);
- (b) amending or discharging the registration so as to reflect the terms of the agreement in a case within paragraph subsection (1)(b); or
- (c) amending the registration to release some property that is no longer collateral or that is no longer collateral or that was never collateral under a security agreement between the secured party and the debtor or grantor referred to in subsection (1)(c).

(3) If a secured party fails to comply with subsection (1), the debtor or grantor may apply to the Court to issue an order amending or discharging the registration, as the case may be.

Court order to amend or discharge

64. (1) The Court may, on application by the debtor or grantor under subsection 63(4), order the registration to be amended or discharged.

(2) The Court may make any other order as it thinks proper for the purpose of giving effect to an order under subsection (1).

(3) The Registrar shall amend or discharge a registration in accordance with the order of the Court under subsection (1) as soon as reasonably practicable after receiving the order.

Searches of register

Search in register

- 65.** (1) A person may be searched only by reference to the following criteria:
- (a) the name of the debtor or grantor;
 - (b) the name and address of the debtor or grantor or, if the debtor or grantor is a corporation or unincorporated, the registered name and address;
 - (c) the name and national registration identity number of the debtor or grantor;
 - (d) if the debtor or grantor is a corporation, the incorporation or registration number;
 - (e) if collateral is required to be described by serial number in a financing statement, the serial number of the collateral;
 - (f) the registration number assigned to the registration under section 49;
 - (g) any other criteria specified in the regulations.
- (2) A search in the register may be carried out without assigning any reason for the search.

Search purposes, etc

- 66.** A search of the register may be carried out only by the following persons for the following purposes:
- (a) a debtor or secured party for a purpose that relates to the debtor's or secured party's security interest in respect of which a financing statement has been registered;
 - (b) a person for the purpose of—

- (i) establishing whether or not personal property that is to be purchased or otherwise dealt with by the person is subject to a security interest:
- (ii) establishing whether to provide credit to, or to obtain a guarantee or an indemnity from, the person named in the search or the person with an interest in the personal property described in the search:
- (iii) establishing whether to provide credit to, or to obtain a guarantee or an indemnity from, a related company of the company named in the search or of the company with an interest in the personal property described in the search:
- (iv) establishing whether to invest in, with, or through, the person named in the search:
- (v) establishing whether to invest in, with, or through, a related company of the company named in the search or of the company with an interest in the personal property described in the search:
- (c) a liquidator of a company for a purpose that relates to the administration of the liquidation:
- (d) a receiver for a purpose that relates to the administration of the receivership:
- (e) the Official Assignee for a purpose that relates to the administration of the bankruptcy of the person named in the search:
- (f) an executor or administrator of a deceased estate for a purpose that relates to the administration of the deceased estate of the person named in the search:
- (g) a public sector agency for a purpose that relates to the maintenance of the law (including the prevention, detection, investigation, prosecution, and punishment of offences):
- (h) the holder of a lien or charge, or a creditor, for a purpose that relates to the enforcement of the lien, charge, or creditor's rights, as the case may be:
- (i) a bailiff of the High Court or of any other Court for a purpose that relates to the enforcement of a Court order or warrant:

- (j) any news medium for the purpose of verifying or establishing, in relation to a particular record, a fact that relates to its news activities:
- (k) the Registrar for a purpose that relates to any of the functions, duties, and powers exercisable by the Registrar in relation to this Act:
- (l) a person for the purpose of advising another person in connection with any of the purposes referred to in paragraphs (a) to (l).

Offences on registration and search

67. A person who submits a registration or carries out a search in the register with a frivolous, malicious or criminal purpose or intent is guilty of an offence.

Printed search result receivable as evidence

68. A printed search result that purports to be issued by the register is receivable as evidence and is, in the absence of evidence to the contrary, proof of the registration of any financing statement to which the search relates, including—

- (a) the date and time of registration of the financing statement; and
- (b) the order of registration of the financing statement as indicated by the registration number, date, and time set out in the printed search result.

PART IX ADMINISTRATION

Movable property security register

- 69.** (1) The Registrar shall keep and maintain a register of movable property security.
- (2) The Register shall be an electronic register; and
 - (3) Any record of a particular or other matter made using a computer for the purpose of keeping the register is taken to be an entry in the register.

- (4) The Minister shall determine the form and manner of registration under the Act or impose any conditions as he thinks fit.

No fee for compliance with demand

70. A secured party may not charge any fees for compliance with a demand given under section 63, unless the parties otherwise agree.

Restoration of registration

71. (1) The Registrar may restore a registration if it appears to the Registrar that, due to a clerical error made by the Registrar, the registration has been incorrectly discharged or removed.

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

Removal of data from register

72. (1) Data in a registration may be removed from the Register—

- (a) when the registration is no longer effective; or
- (b) on the registration of a financing change statement discharging or partially discharging the registration; or
- (c) if the Registrar is satisfied that the data is frivolous or vexatious.

(2) The Registrar must, before he or she makes a decision under subsection (1)(c), give the secured party notice to show cause, within seven working days of the date on which the notice is given, why the data is not frivolous or vexatious.

(3) If the secured party fails within seven working days of the date on which the notice is given to show cause to the Registrar's satisfaction why the data is not frivolous or vexatious, the Registrar may, remove the data from the register.

(4) If data is removed from the register under subsection (1)(c), the Court may, on the application of the secured party, make an order directing that the data be restored to the register if it is satisfied that the data is neither frivolous nor vexatious.

(5) The Court may make any other orders that it thinks proper for the purpose of giving effect to an order under subsection (4).

(6) The Registrar must restore the data to the register in accordance with a Court order made under subsection (4) as soon as reasonable practicable after receiving the order.

PART X

ENFORCEMENT OF SECURITY INTERESTS

General principle of enforceability

73. (1) A secured party may take possession of and sell the collateral when-

- (a) the debtor or grantor is in default under the security agreement; or
- (b) the collateral is at risk.

(2) In subsection (1), collateral is at risk if the secured party has reasonable grounds to believe that the collateral has been or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold, or otherwise disposed of contrary to the provisions of the security agreement.

Apparent possession of certain collateral permitted in some cases

74. (1) A secured party with priority over all other secured parties may take possession of collateral by taking apparent possession if the collateral is of a kind that cannot be readily moved from the debtor's or grantor's premises or is of the kind for which adequate storage facilities are not readily available.

(2) If subsection (1) applies, the secured party may dispose of the collateral on the debtor's or grantor's premises but must not cause the person in possession of the premises any greater inconvenience than is necessary.

Secured party may apply certain collateral in satisfaction of secured obligation

75. If the debtor or grantor is in default, a secured party with priority over all other secured parties may apply an account receivable, any securities, money or a negotiable instrument in the form of a debt obligation taken as collateral to the satisfaction of the obligation secured by the security interest.

Duty of secured party selling collateral

76. A secured party who exercises a power of sale of the collateral under section 73 shall have a duty to obtain the best price reasonably obtainable at the time of sale to the following persons—

- (a) the debtor or grantor;
- (b) any person who has registered a financing statement in the collateral that is effective at the time the secured party took possession of the collateral; and
- (c) any person who has given the secured party notice that that person claims an interest in the collateral.

Power of sale applies to document of title and related goods

77. If the collateral is a document of title, the power of sale provided by section 73 applies to the document of title and to the goods to which it relates.

Method of sale of collateral

78. A secured party may affect a sale of the collateral under section 73 by auction, public tender, private sale or any other method as may be provided in the security agreement.

Notice of sale of collateral

79. (1) A secured party who intends to sell the collateral under section 73 shall, within seven working days or a period as provided by any other written law before selling the collateral, give notice to the persons referred to in section 76.

(2) Subsection (1) does not apply if –

- (a) the collateral may perish within seven working days of the repossession;
- (b) the secured party believes on reasonable grounds that the collateral will decline substantially in value if it is not disposed of immediately;
- (c) the cost of care and storage of the collateral is disproportionately large in relation to its value;
- (d) the collateral is foreign currency;
- (e) the collateral consists of inventory;
- (f) the security interest arises under a negotiable instrument creating a charge on the property of a corporation comprises all, or substantially all, of the assets of the corporation;
- (g) after the secured party takes possession of the collateral, every person entitled to receive notice under subsection (1) consents in writing to the immediate sale of the collateral; or
- (h) a Court grants leave to the secured party to sell collateral under section 73 without complying with subsection (1).

(3) Where a security interest is over collateral and some, but not all, of the collateral is described in subsection (2), the secured party may sell the collateral described in subsection 73(2) without complying with subsection (1).

Purchaser for value and in good faith

80. Where a secured party disposes of collateral to a purchaser who acquires the interest for value and in good faith and who takes possession of it, the purchaser

acquires the collateral free from the interest of the debtor or grantor whether or not the requirements of this section have been complied with by the secured party.

Secured party to give statement of account to debtor or grantor

81. If collateral is sold by a secured party under section 73, the secured party shall, within fourteen working days or a period as provided by any other written law after the sale of the collateral, give the persons referred to in section 76 a statement of account in writing, showing –

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

Secured party selling collateral to pay prior ranking secured parties

82. A secured party who has sold the collateral under section 73 shall, before applying the net proceeds of the sale towards the satisfaction of the debt or other obligation secured by the security interest of the secured party, apply the net proceeds of the sale towards satisfying the claims of any person who has registered a financing statement in the name of the debtor or grantor over the collateral that is sold if –

- (a) the registration was effective immediately before the collateral was sold;
and
- (b) the security interest relating to that registration had priority over the security interest of the secured party who sold the collateral.

Distribution of surplus

83. (1) If the secured party has retained the collateral pursuant to section 75 or sold the collateral under section 73, as the case may be, the secured party shall pay the following persons the amount of any surplus in the following order –

- (a) any person who has registered a financing statement in the name of the debtor or grantor over the collateral that is sold where the registration was effective immediately before the collateral was applied or sold;
- (b) any person who has registered a financing statement in the name of the debtor or grantor over the collateral that is sold where the security interest relating to that registration was subordinate to the security interest of the secured party who applied or sold the collateral;
- (c) any other person who has given the secured party notice that that person claims an interest in the collateral that is sold and in respect of which the secured party is satisfied that that person has a legally enforceable interest in the collateral; and
- (d) the debtor or grantor.

(2) In subsection (1), "net proceeds" means net proceeds of the sale after deducting the reasonable costs and expenses of the secured party of, and incidental to, taking possession of, holding, storing, repairing, maintaining, valuing, and preparing the sale of, and selling, the collateral.

Debtor's or grantor's right to recover surplus

84. The persons referred to in section 83 are entitled to recover the amount of any surplus from the secured party.

Surplus may be paid into Court

85. (1) The secured party may pay the surplus to the Court if there is a question as to who is entitled to receive payment under section 83.

(2) The surplus may only be paid out on an application by a person claiming an entitlement to the surplus.

Proposal of secured party to retain collateral

86. (1) A secured party with priority over all other secured parties may, after default under the security agreement, propose to retain the collateral in satisfaction of the obligation secured by it.

(2) The secured party shall give notice of the proposal to the persons referred to in section 79.

When contracting out of certain provisions in this Part permitted

87. (1) The parties to a security agreement may contract out of sections 73, 74(1), 75, 76(a), 77, 86(1), 89, 94 and 95.

(2) The parties to a security agreement may contract out of the debtor's or grantor's right to—

- (a) receive a statement of account under section 81;
- (b) receive notice of a secured party's proposal to retain collateral under section 85(2);
- (c) object to a secured party's proposal to retain collateral under section 88;
- (d) not have goods damaged when a secured party removes an accession under section 91(1);
- (e) not be reimbursed for damage caused when a secured party removes an accession under section 91(2) and (3); and
- (f) refuse permission to remove an accession under section 91(4);

(3) The parties to a security agreement may contract out of the secured party's right to apply to a Court for an order in respect of the removal of an accession under section 92.

Persons entitled to notice may object to proposal

88. The secured party shall sell the collateral under section 73 if a person who is entitled to a notice under section 79 and whose interest in the collateral would be

adversely affected by the proposal of the secured party gives to the secured party a notice of objection within seven working days.

Person making objection may be requested by secured party to prove interest

89. (1) The secured party may request a person, other than the debtor or grantor, who objects to provide proof of that person's interest.

(2) If the person to whom subsection (1) applies does not provide proof within seven working days or a period as provided by any other written law after the request of the secured party, the secured party may proceed as if no objection were received from the person.

Position where persons entitled to notice do not object to retention of collateral by secured party

90. (1) If no notice of objection is received, the secured party is, at the expiration of the seven days period or a period as provided by any other written law referred to in section 88, deemed to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it and is entitled to hold or dispose of the collateral free from all rights and interests of the debtor or grantor and of any person entitled to receive notice under section 76.

(2) If subsection (1) applies all security interests in the collateral that are subordinate to the security interest of the secured party referred to in subsection (1) shall be extinguished.

Secured party shall not damage goods when removing accession

91. (1) A secured party who is entitled to take possession of an accession under section 73 shall remove the accession from the whole in a manner that causes no greater damage to the other goods or that puts the person in possession of the whole

to no greater inconvenience than is necessary incidental to the removal of the accession.

(2) A person, other than a debtor or grantor, who has an interest in the other goods at the time the goods become an accession shall be entitled to reimbursement for any damage to that person's interest in the other goods caused by the removal of the accession.

(3) Any reimbursement payable under subsection (2) shall not include reimbursement for a reduction in the value of the property caused by the absence of the accession or by the necessity of the replacement of the accession.

(4) A person entitled to reimbursement under this section may refuse permission to remove the accession until the secured party has given adequate security for the reimbursement.

Secured party may apply to Court for order in respect of removal of accession

- 92.** The Court may, on an application made by a secured party, make an order—
- (a) determining who is entitled to reimbursement under subsections 91(2) and (3):
 - (b) determining the amount and kind of security to be provided by the secured party under subsection 91(4):
 - (c) prescribing the depository for the security under subsection 91(4):
 - (d) dispensing with the need for the permission of any or all persons entitled to reimbursement under subsections 91(2) and (3).

Entitled persons may redeem collateral

93. (1) At any time before the secured party sells the collateral or is deemed to have taken the collateral in satisfaction of the obligation secured by it, a person who is entitled to receive a notice under section 79 shall, unless the person otherwise agrees in writing after default, redeem the collateral by –

- (a) tendering fulfillment of all the obligations secured by the collateral; and

- (b) paying a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the collateral for sale, if those expenses have actually been incurred by the secured party, and any other reasonable expenses incurred by the secured party in enforcing the security agreement.
- (2) The rights of the debtor or grantor to redeem the collateral shall have priority over any other person's right to redeem the collateral.

Debtor or grantor may reinstate security agreement

94. (1) At any time before the secured party sells the collateral or is deemed to have taken the collateral in satisfaction of the obligation secured by it, the debtor or grantor may, unless the debtor or grantor has otherwise agreed in writing after default, reinstate the security agreement by –

- (a) paying the sums in arrears, exclusive of the operation of an acceleration clause in the security agreement;
 - (b) remedying any other default by reason of which the secured party intends to sell the collateral; and
 - (c) paying a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing and preparing the collateral for sale, if those expenses have actually been incurred by the secured party, and any other reasonable expenses incurred by the secured party in enforcing the security agreement.
- (2) Subsection (1) does not apply to any security agreement made or entered into before the commencement of this Act.

Limit on reinstatement of security agreement

95. Unless otherwise agreed, the debtor or grantor is not entitled to reinstate a security agreement—

- (a) more than twice, if the security agreement provides for payment in full by the debtor or grantor not later than twelve months after the day on which value was given by the secured party; or
- (b) more than twice in each year, if the security agreement provides for payment by the debtor or grantor during a period greater than twelve months after the day on which value was given by the secured party.

Government Debts under the Government Proceedings Act 1956 [Act 359]

96. The provision of this Act shall not affect section 10 of the Government Proceedings Act 1956 [Act 359].

PART XI MISCELLANEOUS

Enforcement and Sanctions

Offences by a person

97. (1) Any person who registers a notice with malicious intent or fraudulently, commits an offence and is liable upon conviction to a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

(2) Any person who willfully and without proper authorisation destroys or tampers with any record that is in the Registry, or attempts to destroy or tamper with any such record, commits an offence and is be liable upon conviction to a fine not exceeding one million ringgit or imprisonment for a term not exceeding five years or both.

(3) Any person who willfully and forcibly obstructs a secured party or a secured party's agent who is lawfully exercising any power to take possession of collateral, commits an offence against this Act, and is liable upon summary conviction to a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

(4) Any person who attempts to conceal or otherwise alters collateral subject to a security interest hereunder with the intent to defraud or otherwise prevent a secured party of the ability to enforce its security interest commits an offence and is liable upon conviction to a fine not exceeding three million ringgit or imprisonment for a term not exceeding ten years or both.

Offences by corporation

98. (1) If a corporation commits an offence under this Act, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporation or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporation or was assisting in such management –

- (a) may be charged severally or jointly in the same proceedings with the corporation; and
- (b) if the body corporation is found to have committed the offence, shall be deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves-
 - (i) that the offence was committed without his knowledge, consent or connivance; and
 - (ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Act to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed:

- (a) by that person's employee in the course of his employment;
- (b) by the agent when acting on behalf of that person; or
- (c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

General penalty

99. Any person who contravenes or fails to comply with any provision of this Act or any regulations made thereunder or any direction given or requirement imposed thereunder is guilty of an offence, and if no penalty is provided for an offence against this Act or any regulations made thereunder, be liable on conviction to a fine not exceeding one million ringgit.

Entitlement of Damages

Entitlement to damages for breach of obligations

100. (1) If a person fails to discharge any duty or obligation imposed on that person by this Act, the person to whom the duty or obligation is owed and any other person who can reasonably be expected to rely on performance of the duty or obligation has a right to recover damages for any loss or damage that was reasonably foreseeable as likely to result from the failure.

(2) Nothing in subsection (1) limits or affects any liability that a person may incur under any rule of law or enactment other than this Act.

Fees

Fee for registration and search

101. (1) Every application for registration and amendment under the Act shall be accompanied by fee specified in the regulations.

(2) Every search made by the authorised user shall be accompanied by fee specified in the regulations.

(3) The Minister shall make regulations in relations to registration and search.

General Provision

Secured party to provide certain information relating to security interest

102. (1) The debtor or grantor, a judgement creditor, a person with a security interest in movable property of the debtor or grantor, or an authorised representative of any of them, may request the secured party to send or make available to any specified person, at an address specified by the debtor or grantor making the request, any of the following information:

- (a) a copy of a security agreement that creates or provides for a security interest held by the secured party in the movable property of the debtor or grantor;
- (b) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness;
- (c) a written approval or correction of an itemised list of movable property indicating which items are collateral, unless the security interest is over all of the movable property of the debtor or grantor; or
- (d) a written approval or correction of the amount of indebtedness and of the terms of payment of the indebtedness.

(2) A secured party shall comply with the request made under subsection (1) within seven working days of its receipt, unless the secured party has been exempted under subsection (5).

(3) If, without reasonable excuse, the secured party fails to comply with the request within the specified period, the debtor or grantor making the request may apply to the Court for an order requiring the secured party to comply with the request.

(4) If the request is made under subsection (1) and the secured party no longer has an interest in the obligation secured or collateral covered by the registration, the secured party shall send or make available to the person making the request the name and address of the immediate successor in interest and the latest successor in interest, if known.

(5) The Court may, on application by a secured party, make an order to exempt the secured party from complying with subsections (1) and (2) in whole or in part, or may extend the time for compliance if the Court is satisfied that, in the circumstances, it would be unreasonable for the secured party to comply with the request.

(6) A secured party who is required to respond to the request may charge the debtor or grantor the reasonable costs for providing the information.

(7) If the secured party fails to comply with an order of the Court made under subsection (3) the Court may –

- (a) make an order –
 - (i) declaring that the security interest to which the request relates is to be treated as unperfected or extinguished; and
 - (ii) directing the Registrar to discharge and remove the registration relating to the security interest; and
- (b) make such other orders as it thinks proper for the purpose of giving effect to an order under this section.

Evidentiary value of copies certified by Registrar

103. (1) A copy or extract from any document filed or lodged at the office of the Registrar certified to be a true copy or extract signed and sealed by the Registrar shall be admissible in evidence in any proceedings as of equal validity with the original document.

(2) The reference in subsection (1) to a document includes, if a reproduction of that document has been incorporated with a register kept by the Registrar, a reference to that reproduction or transparency.

Evidence of statutory requirements

104. In any legal proceedings—

- (a) a certificate signed and sealed by the Registrar that at a date or during a period specified in the certificate, no security interest was registered under this Act or a corresponding previous written law by a name specified in the certificate shall be admissible as *prima facie* evidence that at the date or during that period, as the case may be, no security interest was registered under this Act or any corresponding previous written law; and
- (b) a certificate signed and sealed by the Registrar that a requirement of this Act specified in the certificate—
 - (i) had or had not been complied with at a date or within a period specified in the certificate; or
 - (ii) had been complied with at a date specified in the certificate but not before that date,

shall be admissible as *prima facie* evidence of matters specified in the certificate.

Issuing document electronically

105. The Registrar may, by electronic means, issue a document which is to be issued by the Registrar under this Act.

Electronic information, etc., certified by Registrar admissible in evidence

106. Any information, document, a copy or extract from any document electronically lodged with the Registrar or issued by the Registrar shall be a true extract from any documents lodged with or submitted to the Registrar under section 105 or issued by the Registrar under section 108 shall be admissible as *prima facie* evidence of matters specified in that information, document, copy or extract.

Power of the Minister

Power to make regulation

- 107.** (1) The Minister may make regulations for or with respect to—
- (a) the fees and charges under this Act, which include exempt payment of any fees and charges on such terms and conditions as the Minister thinks fit; and
 - (b) all matters and things required or authorized by this Act to be prescribed or provided, for the carrying out of, or giving full effect to, the provisions of this Act.

(2) Any subsidiary legislation made under this Act may provide for any act or omission in contravention of the subsidiary legislation and may provide for penalties of a fine not exceeding five hundred thousand ringgit or imprisonment for a term not exceeding three years or to both.

Power to impose terms and conditions

108. In exercising his powers to approve any application, the Minister may impose any terms and conditions as he thinks fit.

Power to amend Schedules

109. The Minister may, by order published in the *Gazette*, vary, delete, add to, substitute or otherwise amend the Schedules to this Act.

Saving and Transitional

General transitional provisions

110. (1) Any act made, executed, issued or passed under the corresponding previous written law and in force and operative at the commencement of this

Act, shall so far as it could have been made, executed, issued or passed, under this Act have effect as if made, executed, issued or passed under this Act.

(2) All proceedings, judicial or otherwise commenced before and pending immediately before the commencement of this Act shall be deemed to have commenced and may be continued under that Act.

(3) The Minister may direct the Commission to issue guidelines, circulars or practice notes to provide for any matters in force before the commencement of this Act to be dealt with in such manner to bring them in conformity with this Act.

ANNEXURE A

SCOPE OF PROPOSED FUTURE FRAMEWORK	
Recommendation 1	Introduction of framework for the registration of security interest on movable property
Recommendation 2	Registration is on voluntary basis
Recommendation 3	The legal framework will apply to floating charge
CREATION OF SECURITY INTEREST	
Recommendation 4	Legal framework apply to all movable property
Recommendation 5	The establishment of a single comprehensive regime
POLICY STATEMENTS III REGISTRATION SYSTEM AND THE REGISTER	
Recommendation 6	The registration system will be fully electronic
Recommendation 7	Perfection of security interest is perfected and effective against third parties if – <ul style="list-style-type: none"> • a notice with respect to the security interest is registered in the Registry; or • the secured creditor is in possession of the movable property.

Recommendation 8	The legal framework will provide notice filing
Recommendation 9	Only interested person can request information from the Register
Recommendation 10	Amendment to financing statement will be allowed to be registered by the grantor/debtor/secured creditor
Recommendation 11	The legal framework will provide criminal sanction for false statement made to the Registrar
Recommendation 12	The registration of security interest is effective unless seriously misleading
Recommendation 13	The registration of a financing statement may be cancelled by a notice
Recommendation 14	The legal framework will require disclosure on any subordination of financing statement
Recommendation 15	The framework will generally allow any person to search the register and obtain printed search result. However, consideration must also be taken with regards to Personal Data Protection Act PDPA 2010 where information to be made available to the public will be not be those which are sensitive information under PDPA.
POLICY STATEMENTS IV PRIORITY	
Recommendation 16	As a general rule a perfected security interest has priority over an unperfected security interest in the same collateral and that priority between perfected

	security interests in the same collateral is determined by the time the party has taken the perfecting step
Recommendation 17	The legal framework shall provide clear parameters with regards to the security interests/interest in different circumstances
POLICY STATEMENTS V ENFORCEMENT OF A SECURITY INTEREST & TRANSITION AND OTHER PROVISIONS	
Recommendation 18	The legal framework shall provide the enforcement of interests after default for the debtor/grantor/secured creditor
Recommendation 19	The legal framework shall allow the termination of enforcement by grantor or any person who has interest on the secured property
Recommendation 20	Provision will be made to ensure that appropriate protection is provided for the security interest involving debtor/grantor under insolvency or receivership
Recommendation 21	General transition provision
Recommendation 22	Prior security interests
Recommendation 23	Consequential amendments