

CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

SECURED TRANSACTIONS ORDER, 2016

ARRANGEMENT OF SECTIONS

Section

PART I
PRELIMINARY

1. Citation, commencement and long title
2. Application of Order
3. Interpretation
4. Order binds Government

PART II
ADMINISTRATION

5. Appointment of Registrar and other officers
6. Collateral Registry
7. Register of personal property security
8. Seal of Registry
9. Registrar may refuse to provide certain services relating to register

PART III
SECURITY AGREEMENTS

10. Effectiveness of security agreement

11. Description of collateral in security agreement

PART IV

PERFECTION OF SECURITY INTERESTS

12. Perfection of security interest
13. Continuity of perfection

PART V

SECURITY INTERESTS IN PERSONAL PROPERTY

14. Security interests in after-acquired property
15. Security interests in proceeds
16. Continuous perfection of security interests in proceeds
17. Temporary perfection of security interests in proceeds in other cases
18. Temporary perfection of security interests in negotiable instruments or investment securities
19. Temporary perfection of security interests in negotiable documents of title or goods
20. Perfection where goods in hands of bailee
21. Security interests in crops

PART VI

PRIORITY BETWEEN SECURITY INTERESTS

Priority of security interests generally

22. Priority of security interests in same collateral
23. Transfer of security interests does not affect priority
24. Voluntary subordination of security interests

Priority of advances

25. Priority of security interests to all advances

Priority of purchase money security interests

26. Priority of purchase money security interests in collateral etc. or its proceeds
27. Non-proceeds security interests in accounts receivable

Priority of security interests in accessions

28. Security interests in accessions
29. Priority of security interests in goods before they become accessions

Priority of security interests in processed or commingled goods

30. Continuation of security interests in processed or commingled goods
31. Limit on value of priority of processed or commingled goods
32. Priority where more than one security interest continues in processed or commingled goods
33. Priority of purchase money security interests in goods that continue in processed or commingled goods

Priority of security interests in transferred collateral

34. Rights of debtor may be transferred
35. General priority of security interests in transferred collateral over security interests granted by transferee
36. Transfer of debtor's interest in collateral with prior consent of secured party

PART VII
SPECIAL PRIORITY RULES

37. *Lien* has priority over security interests relating to same goods
38. Transferee takes money free of security interest
39. Priority of creditor who receives payment of debt
40. Priority of purchaser of negotiable instrument, document of title, chattel paper and security certificate
41. Priority of interests on assignment of account receivable or non-negotiable chattel paper
42. Judgment creditor has priority over unperfected security interests
43. Buyer or lessee takes collateral free of unperfected security interests
44. Buyer or lessee of goods sold or leased in ordinary course of business takes goods free of certain security interests

PART VIII
REGISTRATION

45. Person may register financing statement
46. Financing statement or financing change statement not registered
47. Registration of financing statement
48. Verification statement
49. Authorisation to register financing statement or financing change statement
50. Validity of registration
51. Duration of registration
52. Renewal of registration
53. Registration of transfer of perfected security interests
54. Registration of subordinated security interests
55. Amendment or discharge of registration
56. Discharge of registration relating to consumer goods

- 57. Debtor may demand registration of financing change statement
- 58. Procedure where non-compliance with demand and no court order in cases not involving security trust deed
- 58A. Removal of data from register
- 59. Search in register
- 60. Offences on registration and search
- 61. Search certificate as evidence

PART VIII
ENFORCEMENT OF SECURITY INTERESTS

- 62. Application of this Part
- 63. General principle of enforceability
- 64. Secured party may render collateral unusable
- 65. Secured party may apply certain collateral in satisfaction of secured obligation
- 66. Collateral at risk
- 67. Repair and preparation of collateral
- 68. Duty of secured party selling collateral
- 69. Power of sale applies to document of title and related goods
- 70. Method of sale of collateral
- 71. Notice of sale of collateral
- 72. Buyer of collateral takes free of security interests
- 73. Secured party to give statement of account to debtor
- 74. Secured party selling collateral to pay prior ranking secured parties
- 75. Distribution of surplus
- 76. Surplus may be paid into Court
- 77. Proposal of secured party to retain collateral
- 78. Persons entitled to notice may object to proposal
- 79. Person making objection may be requested by secured party to prove interest
- 80. Position where persons entitled to notice do not object to retention of collateral by secured party

81. Secured party shall not damage goods when removing accession
82. Entitled persons may redeem collateral
83. Debtor may reinstate security agreement
84. Limit on reinstatement of security agreement

PART IX GENERAL

85. Damages
86. Secured party to provide certain information relating to security interests
87. Service of documents etc.
88. General penalty
89. Composition of offences
90. Offences by body corporate
91. Overriding effect
92. Regulations

PART X REPEALS AND TRANSITIONAL PROVISIONS

93. Repeal
94. Interpretation
95. Prior security interests continue to be enforceable against third parties
96. Prior registered security interests deemed to be perfected by registration during transitional period
97. Other prior security interests deemed to be perfected during transitional period
98. Prior security interests to be perfected during transitional period
99. Consequences of not perfecting certain security interests
100. Time of registration of certain prior security interests
101. Priority of prior security interests during transitional period
102. Priority of third party interests during transitional period

CONSTITUTION OF BRUNEI DARUSSALAM

(Order made under Article 83(3))

SECURED TRANSACTIONS ORDER, 2016

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

PART I PRELIMINARY

Citation, commencement and long title

1. (1) This Order may be cited as the Secured Transactions Order, 2016, and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(2) The long title of this Order is “An Order to provide for security interests in personal property relating to the creation, perfection, registration, priority and enforcement of personal property securities and for matters connected therewith”.

Application of Order

2. (1) Subject to subsection (2), this Order applies to –
- (a) *liens* created by judgment or by operation of the law;
 - (b) every transaction that in substance creates security interests, without regard to its form and without regard to the person who has title to the collateral, including –
 - (i) conditional sale agreements (including agreements to sell subject to retention of title);
 - (ii) hire-purchase agreements;

BLUV as at 17th December 2016

- (iii) consignments;
- (iv) operating and financial leases; and
- (v) outright assignments of intangibles.

(2) This Order does not apply to –

(a) any right of set-off whether or not arising under or from financial contracts governed by netting agreements; or

(b) 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 licence to occupy land, unless the right to payment is evidenced by an investment security;
- (iii) a transfer of present or future claim to wages, salary, pay, commission or any other compensation for labour or personal services of an employee;
- (iv) an assignment for the general benefit of creditors of the person making the assignment;
- (v) a transfer of an interest or claim in or under a contract of annuity or life policy of insurance or takaful;
- (vi) a transfer of a right to damages in tort not related to commercial activity;
- (vii) *(Deleted by S 76/2016).*
- (viii) a transfer or mortgage in a licence, concession or other personal privilege issued or granted under any other written law for which a security interest is prohibited.

Interpretation

3. (1) In this Order, unless the context otherwise requires –

“accession” means goods that are installed in, or affixed to, other goods without losing their identity;

“account debtor” means a person who is obligated under an account receivable or chattel paper;

“account receivable” means a right to payment of a monetary obligation that is not evidenced by chattel paper, a negotiable instrument or an investment security, whether or not that obligation has been earned by performance;

“advance” means –

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

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

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

“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 personal property that is subject to a security interest;

“control” in relation to deposit and securities accounts exists, –

(a) automatically on the creation of security interest if bank or other financial institution that maintains the deposit or securities accounts is the secured creditor; or

(b) if the bank or other financial institution has concluded a control agreement with a debtor and secured party.

“commercial consignment” means a consignment where –

(a) a consignor has reserved an interest in goods that the consignor has delivered to the consignee for the purpose of sale, lease or other disposition; and

(b) both the consignor and the consignee deal in the ordinary course of business in goods of that description, but does not include an agreement under which goods are delivered to an auctioneer for the purpose of sale;

“consumer goods” means goods that are used or acquired for use primarily for personal, domestic or household purpose;

“crops” means crops and plants, whether grown, growing or yet to be planted, attached to land by roots or forming part of trees, but does not include trees, unless the trees are grown for commercial purposes and sale;

“debtor”–

(a) means a person that has an interest in a collateral, and includes –

(i) a person who owes payment or performance of an obligation secured, whether or not that person owns or has other rights in the collateral;

(ii) a person who receives goods from another person under a commercial consignment;

(iii) a lessee under a lease for a term of more than one year;

(iv) a transferor of an account receivable or chattel paper;

- (v) a transferee of or successor to the interest of a person referred to in sub-paragraphs (i) to (iv); or
 - (vi) if the person referred to in sub-paragraph (i) and the person who owns or has other rights in the collateral are not the same person, includes –
 - (A) the person who owns or has other rights in the collateral, where the term debtor is used in a provision of this Order dealing with the collateral;
 - (B) the obligor, where the term debtor is used in a provision of this Order dealing with the obligation; or
 - (C) both the person who owns or has other rights in the collateral and the obligor (if the context so requires); and
- (b) includes a trustee for any of the persons referred to in paragraph (a);

“default” means –

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

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

- (a) that covers goods in the possession of the bailee and 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 –
 - (i) a named person, or to a transferee of that person;
 - (ii) a bearer; or
 - (iii) the order of a named person;

“equipment” means goods that are held by a debtor other than as inventory or consumer goods;

“farm products” include crops, fish, livestock and their unborn offspring and products, whether or not grown or raised naturally or artificially;

“financial lease” means a lease, including a hire-purchase agreement, at the end of which –

(a) a lessee automatically becomes the owner of the goods that is the object of the lease;

(b) the lessee may acquire ownership of the goods by paying no more than a nominal price; or

(c) the goods has no more than a nominal residual value;

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

“financing statement” means forms in writing or their electronic equivalent as provided in the regulations on which information is provided in order to effect, amend, terminate or continue a registration;

“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 concluded, whether or not provided or given under an obligation to do so;

“goods” means tangible personal property and include farm products, inventory, equipment, consumer goods, trees that have been severed, and petroleum or minerals that have been extracted, but does not include chattel paper, document of title, negotiable instrument, investment security or money;

“intangible” means personal property other than goods, chattel paper, documents of title, investment securities, money or negotiable instruments;

“inventory” means goods that are –

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

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

(c) raw materials or work in progress; or

(d) materials used or consumed in a business;

“investment security” means a writing, whether or not it is in the form of a security certificate, that is recognised in a place in which it is issued or dealt with as a warrant, option, share, right to participate, or other interest in property or an enterprise, or that evidences an obligation of the issuer, and that, in the ordinary course of business, is transferred by –

(a) delivery with any necessary endorsement, assignment, or registration in the records of the issuer or agent of the issuer;

(b) an entry in the records of a clearing house or central securities depository;

(c) an entry in the records maintained for that purpose by or on behalf of the issuer; or

(d) an entry in the records maintained for that purpose by or on behalf of the nominee,

but does not include a writing that evidences a monetary obligation that is secured by an interest in land;

“land” includes all estates and interests, whether freehold or leasehold, in real property;

“Minister” means the Minister of Finance;

[S 76/2016]

“negotiable instrument” means –

(a) a bill of exchange or promissory note within the meaning of the Bills of Exchange Act (Chapter 172); 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 investment security;

“operating lease” means a lease, other than a financial lease, for a term of more than one year;

“perfected security interest” means the security interest that has been created and becomes effective against third parties by control, possession, registration or temporarily, as the case may be;

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

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

“proceeds” means identifiable or traceable personal property received as a result of sale, other disposition, collection, lease or licence of the collateral, including proceeds of proceeds, civil and natural fruits, dividends, distributions, insurance or takaful proceeds and claims arising from defects in, damage to or loss of collateral;

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

“purchase money security interest” means –

(a) a security interest taken in collateral by a seller that secures the obligation to pay any unpaid portion of the purchase price of the collateral;

(b) a security interest taken in collateral by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights;

(c) the interest of a financial lessor or a lessor of goods under a lease for a term of more than one year; 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;

“Registrar” means the Registrar of Collateral Registry appointed under section 5 and includes any Deputy Registrar of Collateral Registry;

“Registry” means the Collateral Registry established by section 6;

“regulations” means the regulations made under this Order;

“secured party” means a person in whose favour a security interest is created, including –

(a) a consignor;

(b) a financial lessor and a lessor who acquired goods under an operating lease;

(c) a transferee of an intangible;

- (d) a seller who reserved title to the sold goods; or
- (e) a trustee or agent of the person referred to in paragraphs (a) to (d);

“security agreement” means an agreement between the debtor and secured party that creates or provides for a security interest;

“security interest” means a property right in personal property that is created by agreement and secures payment or other performance of an obligation, regardless of whether the parties have denominated it as a security interest, and includes the right of a seller in an instalment sale or a sale with retained title, but it does not include a personal right against a guarantor or other person liable for the payment of the secured obligation;

“value” means any consideration that is sufficient to support a simple contract, and includes an antecedent debt or liability and a binding commitment to provide future value.

- (2) Except as otherwise provided in this Order, the determination of whether goods are consumer goods, equipment, farm products or inventory is to be made at the time when the security agreement is concluded.

Order binds Government

- 4. (1) Subject to subsection (2), this Order shall bind the Government, but nothing in this Order shall render the Government liable to be prosecuted for an offence.

- (2) For the avoidance of doubt, this Order shall be read subject to Article 84C of the Constitution of Brunei Darussalam, and nothing in this Order shall be construed as conferring on any court any jurisdiction or power to entertain any proceedings referred to in Article 84C of the Constitution of Brunei Darussalam.

PART II
ADMINISTRATION

Appointment of Registrar and other officers

5. (1) The Minister shall, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint a Registrar of Collateral Registry for the purposes of this Order.

(2) The Minister may appoint a Deputy Registrar and one or more Assistant Registrars of Collateral Registry to assist the Registrar in carrying out his functions and duties under this Order. *[S 76/2016]*

(3) The Registrar may, subject to such conditions as he thinks fit, delegate to the Deputy Registrar or any Assistant Registrars any of his powers or functions under this Order, except the power of delegation conferred by this subsection.

(4) The Registrar may continue to exercise any power conferred on him or perform any function under this Order notwithstanding the delegation of such power or function under this subsection.

Collateral Registry

6. There shall be established an office which is known as the Collateral Registry for the purposes of registrations under this Order.

Register of personal property security

7. (1) The Registrar shall keep and maintain a register of personal property security.

- (2) The register shall –
- (a) be an electronic register; and
 - (b) operated at all times, unless the Registrar suspends the operation in accordance with section 9.

(3) Any record of a particular or other matter made by using a computer for the purpose of keeping the register is taken to be an entry in the register.

Seal of Registry

8. There shall be a seal of the Registry and impressions of the seal shall be judicially noticed.

Registrar may refuse to provide certain services relating to register

9. The Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar considers that it is not practical to provide any service relating to the register.

PART III SECURITY AGREEMENTS

Effectiveness of security agreement

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

Description of collateral in security agreement

11. (1) A security agreement is enforceable and a security interest created in respect of the collateral only if –

- (a) a security agreement contains an adequate description of the collateral, which description may be generic or specific; and
- (b) *(Deleted by S 76/2016)*
- (c) the debtor has rights in the collateral.

[S 76/2016]

(2) A description of the collateral is adequate if the collateral is described by –

- (a) item, kind, type or category;

(b) a statement that a security interest is taken in all of the debtor's present and after-acquired property; or

(c) a statement that a security interest is taken in all of the debtor's present and after-acquired property except for specified items or kinds of personal property.

(3) For the purposes of subsection (2), a description of the collateral is inadequate if the collateral is described as consumer goods without specific reference to the item or kind of collateral.

(4) Except as otherwise provided in this Order, a security interest in proceeds is enforceable against a third party, whether or not the security agreement providing for the security interest contains a description of the proceeds.

PART IV

PERFECTION OF SECURITY INTERESTS

Perfection of security interest

- 12.** (1) A security interest is perfected when –
- (a) the security interest is created; and
 - (b) either –
 - (i) a financing statement is registered in respect of the security interest;
 - (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); or
 - (iii) the secured party or another person on behalf of the secured party has control of the collateral that is a deposit account or investment security.

(2) Subsection (1) applies regardless of the order in which creation referred to in subsection (1)(a) and either of the steps referred to in subsection (1)(b) occur.

(3) A security interest in cash 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

13. A security interest is continuously perfected if –

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

PART V

SECURITY INTERESTS IN PERSONAL PROPERTY

Security interests in after-acquired property

14. A security agreement may provide for security interests in after-acquired property which shall be created without written consent by the debtor, unless the after-acquired property is consumer goods.

Security interests in proceeds

15. Except as otherwise provided in this Order, a security interest in the collateral that is dealt with or otherwise gives rise to proceeds shall –

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

but if the secured party enforces the security interest against both the collateral and the proceeds,

the amount secured by 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.

Continuous perfection of security interests in proceeds

16. A security interest in proceeds is continuously perfected 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 the proceeds –

- (a) are of a kind that is within the description of the original collateral; or
- (b) are cash proceeds.

Temporary perfection of security interests in proceeds in other cases

17. (1) Where the proceeds are not cash proceeds and not within the description of the collateral in the financing statement as referred to in section 16, a security interest in the proceeds shall be temporarily perfected within 10 working days after the proceeds arose.

(2) If the secured party does not perfect the security interest by amending the financing statement to include the non-conforming proceeds within the 10 working days, the security interest in the proceeds will become unperfected.

Temporary perfection of security interests in negotiable instruments or investment securities

18. A security interest in a negotiable instrument or an investment security that is perfected by possession shall remain perfected within 10 working days after the secured party made the negotiable instrument or investment security available to the debtor for the purposes of sale, exchange, presentation, collection, renewal or registration of a transfer.

Temporary perfection of security interests in negotiable documents of title or goods

19. A security interest in a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title or goods shall be temporarily perfected within 10 working days after the secured party made the negotiable document of title or goods available to the debtor, if –

- (a) the security interest was perfected by possession; and
- (b) the secured party delivered the negotiable 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

- 20.** A security interest in goods in the possession of a bailee may be perfected when –
- (a) the security interest has been created and a financing statement relating to the goods is registered;
 - (b) possession of a negotiable document of title to the goods has been delivered to the secured party; or
 - (c) the bailee has issued a document of title in the name of the secured party or holds the goods on behalf of the secured party.

Security interests in crops

21. (1) Except as otherwise provided in this Order, 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) A security interest in crops shall only be created with the consent of the mortgagee or lessor under a lease with the duration of not more than 3 years.

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

PART VI
PRIORITY BETWEEN SECURITY INTERESTS

Priority of security interests generally

Priority of security interests in same collateral

22. (1) Where the Order 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;

(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, or another person acting on behalf of the secured party, taking possession of the collateral (except where possession is a result of seizure or repossession); or

(iii) the secured party, or another person acting on behalf of the secured party, acquiring control of the collateral; and

(c) priority between unperfected security interests in the same collateral shall be determined by the order of creation of the security interests.

(2) For the purposes of subsection (1), a security interest that is first perfected in one manner and later perfected in another manner without a break in perfection is continuously perfected and retains its priority from the date of its original perfection.

(3) Subject to section 15, the priority of a security interest in original collateral shall also be the priority with respect to its proceeds.

Transfer of security interests does not affect priority

23. 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

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

(2) No agreement to subordinate the security interest shall adversely affect rights of a person who is not a party to the agreement.

(3) An agreement to subordinate a security interest shall be effective according to its terms between the parties and may also be enforced by a third party if the third party is the person for whose benefit the agreement is intended.

Priority of advances

Priority of security interests to all advances

25. 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 interests in collateral etc. or its proceeds

26. Subject to section 15, a purchase money security interest shall have priority over a non-purchase money security interest in the same collateral given by the same debtor if –

(a) in collateral or its proceeds, other than inventory, the purchase money security interest in the collateral or its proceeds is perfected within 10 working days after the day on which the debtor, or another person at the request of the debtor, obtained possession of the collateral;

(b) in inventory or its proceeds, the purchase money security interest in the inventory or its proceeds is perfected at the time the debtor, or another person at the request of the debtor, obtains possession of the collateral; or

(c) in an intangible or its proceeds, the purchase money security interest in the intangible or its proceeds is perfected within 10 working days after the day on which the security interest in the intangible was created.

Non-proceeds security interests in accounts receivable

27. (1) A security interest in accounts receivable that is given for new value shall have priority over a purchase money security interest in the accounts receivable as proceeds of inventory if the security interest in the accounts receivable is registered before the purchase money security interest in the inventory.

(2) In this section, “new value” means value other than antecedent debt or liability.

Priority of security interests in accessions

Security interests in accessions

28. (1) A security interest in the collateral that becomes an accession shall continue 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 interests in goods before they become accessions

29. A security interest in goods that is created at the time when the goods become an accession shall have 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 processed or commingled goods

30. A perfected security interest in goods that subsequently becomes part of a product or mass shall continue as a perfected security interest in the product or mass if the goods are manufactured, processed, assembled, or commingled in such a way that their identity is lost in the product or mass.

Limit on value of priority of processed or commingled goods

31. If more than one security interest is perfected in the goods before they become part of a product or mass, the security interests rank equally in proportion to the value of the goods at the time they became part of the product or mass.

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

32. (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 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.

Priority of purchase money security interests in goods that continue in processed or commingled goods

33. Notwithstanding section 32, a perfected purchase money security interest in goods that continues in a product or mass shall have 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.

Priority of security interests in transferred collateral

Rights of debtor may be transferred

34. (1) The rights of a debtor in collateral may be transferred despite a provision in the security agreement prohibiting transfer or declaring a transfer to be a default.

(2) No transfer by the debtor shall prejudice the rights of the secured party under the security 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 judicial enforcement proceedings.

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

35. Where a debtor transfers an interest in the collateral that, at the time of the transfer, is subject to a perfected security interest, that security interest shall have priority over any other security interest granted by the transferee.

Transfer of debtor’s interest in collateral with prior consent of secured party

36. (1) If a security interest is perfected by registration and the debtor transfers all or part of its interest in the collateral, the security interest in the transferred collateral shall remain perfected against such collateral and, if the security interest extends to after-acquired property, the security interest in the transferred collateral shall remain perfected against any collateral that the transferee acquires within 15 days.

(2) The security interest shall not be perfected with respect to the collateral acquired by the transferee after the expiration of the 15 day period unless the secured party registers a financing statement naming the transferee as the debtor.

PART VII
SPECIAL PRIORITY RULES

Lien has priority over security interests relating to same goods

37. A possessory *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 goods contained a provision prohibiting the creation of a *lien* by the debtor.

Transferee takes money free of security interest

38. A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of a secured party.

Priority of creditor who receives payment of debt

39. A creditor who receives payment of a debt owing by a debtor through any payment system shall receive the payment free of a security interest whether or not the creditor had knowledge of the security interest at the time of the payment.

Priority of purchaser of negotiable instrument, document of title, chattel paper and security certificate

40. A purchaser of a negotiable instrument, document of title, chattel paper or security certificate shall have priority over a perfected security interest in the negotiable instrument, document of title, chattel paper or security certificate if the purchaser –

- (a) gave value;
- (b) acquired the negotiable instrument, document of title, chattel paper or security certificate without knowledge that the transaction is a breach of the security agreement to which the security interest relates; and
- (c) took possession of the negotiable instrument, document of title, chattel paper or security certificate.

Priority of interests on assignment of account receivable or non-negotiable chattel paper

41. (1) The rights of an assignee of an account receivable or non-negotiable chattel paper shall be subject to –

- (a) the terms of the contract between the account debtor and the assignor and any defence or claim arising from the contract or a closely connected contract; and
- (b) any other defence or claim of the account debtor against the assignor (including a defence by way of a right of set-off) that accrues before the account debtor receives notification of the assignment.

(2) In this section, “assignee” includes a transferee or other secured party.

Judgment creditor has priority over unperfected security interests

42. (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 charging order or a garnishee order is served on the person holding some property for or on behalf of the debtor.

Buyer or lessee takes collateral free of unperfected security interests

43. A buyer or lessee of collateral who acquires the collateral for value shall take the collateral free of an unperfected security interest in the collateral.

Buyer or lessee of goods sold or leased in ordinary course of business takes goods free of certain security interests

44. A buyer of goods sold in the ordinary course of business of the seller and a lessee of goods leased in the ordinary course of business of the lessor shall take the goods free of a security interest created by the seller or lessor unless the buyer or lessee knows that the sale or lease constitutes a breach of the security agreement under which the security interest was created.

**PART VIII
REGISTRATION**

Person may register financing statement

45. (1) A person may register a financing statement which shall contain the following particulars –

[S 76/2016]

(a) if the debtor is –

(i) an individual, the name, address and, identification card number or passport number;

[S 76/2016]

(ii) an unregistered company –

(A) the name and address of the company; and

(B) the name, job title and contact details of the person acting on its behalf;

(iii) a registered company –

(A) a unique number assigned to it on its incorporation; and

(B) name, address and phone number of the company;

[S 76/2016]

(b) if the secured party is –

(i) an individual, the name, address and, identification card number or passport number;

[S 76/2016]

(ii) an unregistered company, the name and address of the company; or

(iii) a registered company –

(A) a unique number assigned to it on its incorporation; and

(B) name, address and phone number of the company;

[S 76/2016]

(c) a description of the collateral; and

(d) any other particulars as the Registrar may require to be contained in the financing statement.

(2) In this section “unregistered company” has the same meaning as in section 192 of the Insolvency Order, 2016 (S 1/2016).

[S 76/2016]

Financing statement or financing change statement not registered

46. A financing statement or financing change statement shall not be registered if –

(a) it is not submitted in the manner and form as the Registrar may determine that enables the information to be entered directly by electronic means into the register; or

(b) the prescribed fee has not been paid to the Registrar, unless arrangements for its payment have been made in accordance with the regulations.

Registration of financing statement

47. (1) A financing statement shall be registered at the time a registration number, date and time are assigned to it by the Registry, and it shall not be effective against third parties until it is searchable 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.

Verification statement

48. (1) A verification statement shall, as soon as reasonably practicable after a financing statement has been registered, be given to the person who submitted the financing statement for registration.

(2) A copy of the verification statement shall be given to the debtor by the secured party who registered a financing statement, or on whose behalf a financing statement has been registered, within 15 working days after the verification statement is received, unless the debtor has waived in writing the right to receive it.

Authorisation to register financing statement or financing change statement

49. (1) A debtor who enters into a security agreement authorise the registration of a financing statement and any amendments thereto.

(2) The debtor may also authorise registration of a financing statement prior to the conclusion of a security agreement and such authorisation shall be signed by debtor.

Validity of registration

50. (1) The validity of the registration of a financing statement shall not be affected by a defect, irregularity, omission or error unless the defect, irregularity, omission or error is seriously misleading.

- (2) If there is a seriously misleading defect, irregularity, omission or error in –
- (a) the identifier of a debtor; or
 - (b) the serial number of the collateral, if so assigned,

the registration shall be invalid.

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

(4) An incorrect description of certain collateral shall not render the registration invalid with respect to other collateral sufficiently described in the financing statement.

Duration of registration

51. Except as otherwise provided in this Order, a registration of a financing statement shall be valid until –

- (a) the expiration of the term specified in the financing statement;
- (b) the expiration of 10 years commencing on the date on which and at the time at which the financing statement was registered; or
- (c) when the financing statement has been discharged before the expiration of the relevant period referred to in this section,

whichever is the earlier period.

Renewal of registration

52. A registration may be renewed by registering a financing change statement at any time before the expiration of the registration, unless the period of time is extended until –

- (a) the expiration of the new term specified in the financing change statement; or
- (b) the expiration of 10 years commencing on the date on which and at the time at which the financing change statement was registered,

whichever is the earlier period.

Registration of transfer of perfected security interests

53. (1) If a secured party transfers a security interest perfected by registration, the transferred security interest shall remain effective.

(2) The transferee is not required to amend the registration that names the transferor as the secured party or to register a new financing statement against the debtor.

Registration of subordinated security interests

54. If a secured party has subordinated a security interest to the interest of another person, a financing change statement may be registered to disclose the subordination at any time before the expiration of the registration.

Amendment or discharge of registration

55. (1) An amendment to or discharge of a registration may be made by the secured party by registering a financing change statement at any time before the expiration of the registration.

(2) An amendment to a registration –

(a) to add collateral;

(b) to add a new debtor,

(c) *(Deleted by S 76/2016),*

[S 76/2016]

is only effective from the date of registration of the financing change statement.

Discharge of registration relating to consumer goods

56. If a registration covers consumer goods, the secured party shall discharge the registration within 15 working days after all obligations under the security agreement creating the security interest are performed, unless the registration lapses before the expiration of the period.

Debtor may demand registration of financing change statement

57. (1) Without prejudice to section 56, the debtor may demand in writing to the secured party to amend or discharge the registration where –

(a) all of the obligations under the security agreement to which the registration relates have been performed and there is no commitment to make future advances;

(b) the secured party has agreed to release part of the collateral described in the registration;

(c) the collateral described in the registration includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor;

(d) no security agreement exists between the parties; and

(e) the security interest is extinguished in accordance with this Order.

(2) On receipt of the demand submitted under subsection (1), the secured party shall enter in the register, within 15 working days, a financing change statement –

[S 76/2016]

(a) discharging the registration with respect to matters described in subsection 1(a),(d) or (e);

(b) amending or discharging the registration as to reflect the terms of the agreement in a case within subsection (1)(b); or

(c) amending the registration to release some property that is no longer collateral or that was never collateral under a security agreement between the secured party and the debtor referred to in subsection 1(c).

(3) A secured party shall not charge any fee on the demand by the debtor under subsection (1).

(4) *(Repealed by S 76/2016).*

Procedure where non-compliance with demand and no court order in cases not involving security trust deed [S 76/2016]

58. (1) The debtor making a demand under section 57(1) may enter in the register the financing change statement referred to in section 57(2) if the secured party –

(a) fails to comply with the demand within 15 working days after it is received; or

(b) fails, within 15 working days after the demand is received, to give to the debtor a court order to maintain the registration.

(2) The Registrar shall give the secured party a notice stating that the financing change statement will be registered unless a court order to maintain the registration is served on the Registrar within 15 working days of the date on which the notice is given to the secured party.

(3) The notice referred to in subsection (2) must be given to the secured party as soon as reasonably practicable after the financing change statement is entered in the register.

Removal of data from register [S 76/2016]

58A. (1) The data in a registration may be removed from the register –

(a) when the registration is no longer effective;

(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 shall, before he makes a decision under subsection (1)(c), give the secured party notice to show cause, within 10 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 10 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, in his discretion, 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 or vexatious and may make any other orders that it thinks.

(5) The Registrar shall restore the data to the register in accordance with the court order under subsection (4) as soon as practicable after receiving the order.

[S 76/2016]

Search in register

59. (1) A person may search the register as to –

- (a) the unique identifier of the debtor;
- (b) the serial number of the collateral, if so assigned; and
- (c) the registration number assigned to the registration.

(2) A search in the register may be carried out without assigning any reason for the search.

Offences on registration and search

60. 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.

Search certificate as evidence

61. The Registry may, on request and payment of the prescribed fee, issue a search certificate which shall be conclusive evidence of the existence of information in the Registry as to the date and time of the issuance.

PART VIII
ENFORCEMENT OF SECURITY INTERESTS

Application of this Part

62. (1) This Part applies to all security interests, except those created or provided for by –

- (a) an outright transfer of an account receivable or chattel paper;
- (b) an operating lease that does not secure payment or performance of an obligation; or
- (c) a commercial consignment that does not secure payment or performance of an obligation.

(2) This Part does not apply to remedies and measures provided in the Insolvency Order, 2015.

(3) The parties to a security agreement may contract out of sections 63, 64, 79, 83 and 84.

General principle of enforceability

63. (1) If the debtor is in default, a secured party may –

- (a) take possession of a collateral; or
- (b) without removal, render the collateral unusable under section 64.

(2) A secured party may proceed under this section –

- (a) to judicial process; or
- (b) without judicial process, if the debtor does not resist the removal of the collateral.

(3) The commencement of enforcement requires registration of the enforcement form which shall identify –

- (a) the debtor;

- (b) the secured party; and
- (c) the collateral against which enforcement is sought.

(4) A prior notice to the debtor is not required for the secured party to repossess or render the collateral unusable under this section.

Secured party may render collateral unusable

64. (1) A secured party with priority over all other secured parties may render the collateral unusable under section 63 if the collateral is of a kind –

- (a) that cannot be readily removed from the premises of the debtor; or
- (b) for which adequate storage facilities are not readily available.

(2) If subsection (1) applies, the secured party may dispose of the collateral on the premises of the debtor:

Provided that it shall not cause the person in possession of the premises, if other than the debtor, any greater inconvenience than is necessary.

Secured party may apply certain collateral in satisfaction of secured obligation

65. (1) Notwithstanding section 63, if the debtor is in default, a secured party with priority over all other secured parties may collect and apply an account receivable, investment security, money or negotiable instrument taken as collateral to the satisfaction of the obligation secured by the security interest.

(2) Unless otherwise agreed, the secured party may notify the account debtor and collect payment.

Collateral at risk

66. (1) Notwithstanding section 63, a secured party may take possession of the collateral, with or without leave of the Court, and sell the collateral when –

- (a) the debtor is in default under the security agreement; and
- (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.

Repair and preparation of collateral

67. (1) The collateral may be disposed of by the secured party in its existing condition or after repair, process or preparation for disposition.

(2) The cost of the repair, process or preparation may be included in the expenses of enforcement.

Duty of secured party selling collateral

68. A secured party who exercises a power of sale of the collateral under section 66 shall have a duty to obtain the best price reasonably obtainable at the time of sale to –

- (a) the debtor;
- (b) any person who has registered a financing statement in the collateral that is effective at the time the secured party repossessed 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

69. If the collateral is a document of title, the power of sale provided by section 66 applies to the document of title and to the goods to which it relates.

Method of sale of collateral

70. A secured party may effect a sale of the collateral under section 66 by auction, public tender, private sale or any other method as may be provided in the security agreement.

Notice of sale of collateral

71. (1) A secured party who intends to sell the collateral under section 66 shall, within 10 working days before selling the collateral, give notice to the persons referred to in section 68.

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

- (a) the collateral may perish within 10 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, maintenance and storage of the collateral is disproportionately large in relation to its value;
- (d) the collateral consists of inventory;
- (e) the security interest comprises all, or substantially all, of the assets of the debtor that is a company;
- (f) after the secured party repossesses the collateral, every person entitled to receive notice under subsection (1) consents in writing to the immediate sale of the collateral; or
- (g) a Court grants leave to the secured party to sell collateral under section 66 without complying with subsection (1).

(3) Where a security interest extends to the collateral and some of which is as described in subsection (2), the secured party may sell the collateral without complying with subsection (1).

Buyer of collateral takes free of security interests

72. The buyer of the collateral in a sale under section 70 shall take it free of any security interest.

Secured party to give statement of account to debtor

73. If collateral is sold by a secured party under section 70, the secured party shall, within 15 working days after the sale of the collateral, give the persons referred to in section 68 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 the sale; and
- (c) the balance owing by the secured party to the debtor, or by the debtor to the secured party, as the case may be.

Secured party selling collateral to pay prior ranking secured parties

74. A secured party who has sold the collateral under section 70 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 the reasonable costs and expenses of the sale.

Distribution of surplus

75. (1) For the purposes of this Order, there is a surplus when the net proceeds recovered on disposition of the collateral under this Part exceeds the amount owed by the debtor to the secured party.

(2) If the secured party has retained the collateral pursuant to section 77 or sold the collateral under section 70, 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 a subordinate security interest perfected by registration, in the order of the priority;

(b) any other person who has given the secured party notice that that person claims an interest in the collateral; and

(c) the debtor.

(3) 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.

Surplus may be paid into Court

76. The secured party may pay the surplus into Court if there is a question as to who is entitled to receive payment under section 75.

Proposal of secured party to retain collateral

77. (1) A secured party with priority over all other secured parties may, after default, 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 68.

Persons entitled to notice may object to proposal

78. The secured party shall sell the collateral under section 70 if a person who is entitled to a notice under section 71 and whose interest in the collateral would be adversely affected by the proposal of the secured party to retain the collateral gives to the secured party a notice of objection within 10 working days after receiving the notice referred to in section 77.

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

79. (1) The secured party may request a person, other than the debtor, who objects to provide proof of the interest of the person.

(2) If the person to whom subsection (1) applies does not provide proof within 10 working days 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

80. (1) If no notice of objection is received, the secured party shall, at the expiration of the 10 day period referred to in section 79 –

(a) be deemed to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it; and

(b) be entitled to hold or dispose of the collateral free from all rights and interests of the debtor and of any person entitled to receive notice under section 71(1).

(2) 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

81. (1) A secured party who is entitled to repossess an accession under section 63 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 for the removal of the accession.

(2) A person, other than a debtor, 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 the interest of that person 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 removal 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.

Entitled persons may redeem collateral

82. (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 71 may, unless the person otherwise agrees in writing after default, redeem the collateral by –

- (a) tendering fulfilment 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.

(2) The rights of the debtor to redeem the collateral shall have priority over any other person's right to redeem the collateral.

Debtor may reinstate security agreement

83. (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 may, unless the debtor has otherwise agreed in writing after default, reinstate the security agreement by –

- (a) paying the sums actually 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.

(2) Subsection (1) does not apply to any security agreement made or entered into before the commencement of this Order.

Limit on reinstatement of security agreement

84. Unless otherwise agreed, the debtor shall not be entitled to reinstate a security agreement more than twice in each year.

PART IX GENERAL

Damages

85. (1) If a person fails to discharge any duty or obligation imposed by this Order, 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 shall have 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) shall limit or affect any liability that a person may incur under any written law other than this Order.

(3) In addition to the damages recoverable under subsections (1) and (2), the person who registered a financing statement without authorisation of the debtor shall be responsible to pay to the debtor damages.

Secured party to provide certain information relating to security interests

86. (1) A debtor may request the secured party to send or make available to any specified person, at an address specified by the debtor making the request, any of the following information –

(a) a summary of a security agreement that creates or provides for a security interest held by the secured party in the personal property of the debtor;

(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 personal property indicating which items are collateral, unless the security interest is over all of the personal property of the debtor; or

(d) a statement of account indicating the payoff amount needed to fully satisfy the secured obligation.

(2) A secured party shall comply with the request made under subsection (1) within 10 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 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 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 debtor the name and address of the immediate successor in interest or transferee and, if known, the latest successor in interest or transferee.

(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 the reasonable costs for providing the information.

(7) A debtor shall be entitled to receive a reply without charge once every 3 months.

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

(a) issue 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.

Service of documents etc.

87. (1) Subject to subsection (3), any document, other than a document to be served in proceedings in Court or a summons issued by a Court in connection with any offence under this Order, that is required or authorised to be served under this Order or the regulations may be served –

(a) in the case of an individual –

(i) by delivering it to the individual personally;

(ii) by leaving it with an adult person apparently resident at, or by sending it by ordinary post or pre-paid registered post to, the usual or last known address of the place of residence of the individual;

(iii) by leaving it with an adult person apparently employed at, or by sending it by ordinary post or pre-paid registered post to, the usual or last known address of the place of business of the individual;

- (iv) by affixing a copy of the document in a conspicuous place at the usual or last known address of residence or business of the individual;
 - (v) by sending it by facsimile transmission to the fax transmission number given to the Registrar by the individual as the fax transmission number for the service of documents on the individual; or
 - (vi) by sending it by email to the last email address given to the Registrar by the individual as the email address for the service of documents on the individual;
- (b) in the case of a corporation or an unincorporated association –
- (i) by delivering it to the secretary or other like officer of the corporation or unincorporated association or, in the case of a corporation that is a limited liability partnership, the manager of the limited liability partnership;
 - (ii) by leaving it at, or by sending it by ordinary post or pre-paid registered post to, the registered office or principal office of the corporation or unincorporated association in Singapore;
 - (iii) by sending it by facsimile transmission to the fax transmission number given to the Registrar as the fax transmission number for the service of documents on the corporation or unincorporated association; or
 - (iv) by sending it by email to the last email address given to the Registrar by the corporation or unincorporated association as the email address for the service of documents on the corporation or unincorporated association.

(2) Where any document to be served by, or on behalf of, the Registrar or the Minister is –

- (a) served personally in accordance with subsection (1), the document is deemed to have been served on the date that it is delivered;

(b) sent by ordinary post in accordance with subsection (1), the document is deemed to have been served on the person to whom it is addressed on the day after it would in the ordinary course of post be delivered, unless it is returned undelivered;

(c) sent by pre-paid registered post in accordance with subsection (1), the document is deemed to have been served on the person to whom it is addressed 2 days after the day it was posted, whether or not it is returned undelivered;

(d) sent by a facsimile transmission to the fax transmission number in accordance with subsection (1), the document is deemed to have been served on the person to whom it is addressed on the day of the transmission, subject to the receipt on the sending facsimile machine of a notification (by electronic or other means) of a successful transmission to the facsimile machine for that fax transmission number; or

(e) sent by email to an email address in accordance with subsection (1), the document is deemed to have been served on the person to whom it is addressed at the time the email becomes capable of being retrieved by the person.

(3) A document may be served on a person under this Order or the regulations by email only with prior written consent of the person.

(4) Every summons issued by a Court in connection with any offence under this Order may be served on the person concerned –

(a) by delivering it to the person;

(b) by delivering it to any adult person residing at the person's last known place of residence; or

(c) by sending it by pre-paid registered post in a cover addressed to the person at the person's last known place of residence or business or at any address furnished by the person (including the person's alternate address, if any).

(5) In proving service by pre-paid registered post of a summons referred to in subsection (4), it is sufficient to prove that the cover containing the summons was properly addressed, stamped and posted by pre-paid registered post.

General penalty

88. Any person who contravenes or fails to comply with any provision of this Order 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 Order or any regulations made thereunder, be liable on conviction to a fine not exceeding \$20,000.

Composition of offences

89. (1) The Registrar or any person authorised by him in writing may compound any offence against this Order by collecting from the person reasonably suspected of having committed that offence a sum of money not exceeding \$1,000.

(2) On payment of such sum of money, no further proceedings shall be taken against such person in respect of the offence.

Offences by body corporate

90. (1) If a body corporate commits an offence under this Order, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate 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 corporate or was assisting in such management –

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate 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 Order 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.

Overriding effect

91. In the event of a conflict arising from the provisions of this Order and any other written law or in any regulations made thereunder relating to the exercise of the powers and the performance of the functions of the Registrar under this Order, the provisions of this Order shall prevail.

Regulations

92. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as he considers necessary or expedient for giving effect to or carrying out the provisions of this Order, including the prescription of fees or other things required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to all or any of the following matters –

- (a) the procedures, requirements and other matters in respect of the register and its operation, including the form of access to the register;
- (b) the fees and charges payable in connection with any proceedings or matter or in connection with the provision of any service by the Registry;
- (c) the procedures, requirements and other matters in respect of any registration under this Order, including –
 - (i) the description of collateral in financing statements and financing change statements;

- (ii) the kinds of goods that may or shall be described by serial number;
 - (iii) the serial number for various types of goods;
 - (iv) the data fields, limits on the number of characters, abbreviations or symbols that may be used in financing statements and financing change statements;
 - (v) the manner of registering financing statements and financing change statements;
- (d) providing necessary information to be entered in the Registry to effect, renew, discharge or otherwise amend a registration;
- (e) the procedures, requirements and other matters in respect of the form and manner of obtaining verification statements to confirm a registration;
- (f) the procedures, requirements and other matters in respect of searching the Registry, including –
- (i) criteria against which a search may be conducted;
 - (ii) the method of disclosure;
 - (iii) the form of search results;
 - (iv) the abbreviations, expansions or symbols that may be used when conducting searches;
- (g) the procedures, requirements and other matters in respect of notices under this Order, including prescribing –
- (i) the matters in respect of which notices are required under this Order;
 - (ii) the form of notices under this Order;
- (h) anything which may be prescribed or is required to be prescribed under this Order.

PART X
REPEALS AND TRANSITIONAL PROVISIONS

Repeal

93. The following written laws are repealed –

- (a) Part III and section 79 of the Companies Act (Chapter 39);
- (b) section 6(1)(c) of the Hire Purchase Order, 2006 (S 44/2006);

[S 76/2016]

(c) Bills of Sale Act (Chapter 70) and all subsidiary legislation made thereunder;

[S 76/2016]

- (d) Air Navigation (Mortgaging of Aircraft) Order, 2001 (S 57/2001);
- (e) section 14 of the Civil Aviation Order, 2006 (S 63/2006).

[S 76/2016]

Interpretation

94. In this Part, unless the context otherwise requires –

“existing secured party” means a holder of a prior security interest;

“prior law” means any law whether statutory, equitable or common law that existed immediately before the commencement of this Order;

“prior interests” means an interest created or provided for by an agreement or other transaction that was made or entered into before the commencement of this Order and that had not been terminated before that commencement date but does not include a security interest that is renewed or extended by a security agreement or other transaction made or entered into on or after the commencement of this Order;

“prior repealed written law” means the written law repealed under section 93;

“prior third party interest” means a third party interest that arose before the commencement of this Order;

“transitional period” means the period of 6 months commencing on the commencement of this Order.

Prior security interests continue to be enforceable against third parties

95. A prior security interest that was enforceable against third parties under the prior law shall continue, during the transitional period, to be enforceable against third parties under this Order.

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

96. A prior security interest that, immediately before the commencement of this Order, was registered under prior repealed written law shall, during the transitional period, be deemed to be perfected by registration under this Order.

Other prior security interests deemed to be perfected during transitional period

97. A prior security interest that, immediately before the commencement of this Order was not registered shall, during the transitional period, be deemed to be perfected by registration under this Order if the prior security interest had (under the prior law and without the collateral relating to that prior security interest being taken into possession by the secured party) priority over every other prior security interest (if any).

Prior security interests to be perfected during transitional period

98. An existing secured party may, before the end of the transitional period, perfect that secured party’s prior security interest under this Order.

Consequences of not perfecting certain security interests

99. (1) A prior security interest that is deemed to be a perfected security interest under section 96 or 97 and that is not perfected under this Order within the transitional period shall be deemed to be an unperfected security interest on the close of the transitional period.

(2) If a prior security interest that is deemed to be an unperfected security interest under subsection (1) is perfected after the close of the transitional period, that perfection shall be only effective from the time of that perfection.

Time of registration of certain prior security interests

100. (1) For the purposes of this Order, the time of registration of a prior security interest that is deemed to be perfected by registration under this Order shall be –

(a) the date that, under the relevant prior repealed written law, determined the priority of the security interest (where the prior security interest is deemed to be perfected by registration under section 96);

(b) the date that the security interest was created (where the prior security interest is deemed to be perfected by registration under section 96).

(2) When the security interest was perfected within the transitional period, it shall have priority from the date that the security interest was registered or created under the prior law.

(3) Subsection (2) does not affect the priority of a later registered fixed charge over an earlier registered floating charge. For the purposes of this Part, the fixed charge will be deemed to be a purchase money security interest.

Priority of prior security interests during transitional period

101. (1) During the transitional period –

(a) priority between prior security interests shall be determined by the prior law;

(b) priority between security interest that is deemed to be perfected by registration under section 96 or 97 and a security interest perfected in accordance with this Order shall be determined by this Order; and

(c) priority between an unperfected prior security interest and another unperfected security interest shall be determined by the order in which they were created.

(2) During the transitional period, prior security interest deemed to be perfected under section 96 or 97 and security interests perfected in accordance with this Order shall have priority over any unperfected interests.

Priority of third party interests during transitional period

102. During the transitional period –

(a) priority between a prior security interest and a prior third party interest shall be determined by the prior law;

(b) priority between a prior security interest and a third party interest that arose on or after the commencement of this Order shall be determined by this Order; and

(c) priority between a security interest that is not a prior security interest and a prior third party interest shall be determined by this Order.

Made this 4th. day of Jamadilawal, 1437 Hijriah corresponding to the 13th. day of February, 2016 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

**HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN,
BRUNEI DARUSSALAM.**