



Tonga

# **PERSONAL PROPERTY SECURITIES ACT 2010**

**Act No. 33 of 2010**





## PERSONAL PROPERTY SECURITIES ACT 2010

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# PERSONAL PROPERTY SECURITIES ACT 2010

Act No. 33 of 2010

**AN ACT TO FACILITATE BUSINESS AND CONSUMER CREDIT BY PROVIDING RULES ON ATTACHMENT, PRIORITY, PUBLICITY AND ENFORCEMENT OF SECURITY INTERESTS IN PERSONAL PROPERTY, AND RELATED MATTERS**

I assent,  
GEORGE TUPOU V,  
20<sup>th</sup> September 2010.

**BE IT ENACTED** by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

## PART I – PRELIMINARY

### 1 Short title and commencement

- (1) This Act may be cited as the Personal Property Securities Act 2010.
- (2) This Act shall come into force on a day to be proclaimed by His Majesty in Council.

### 2 Interpretation

In this Act, unless the context otherwise requires –

“**account**” means a right to payment of a monetary obligation, whether or not earned by performance –

- (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
- (b) for services rendered or to be rendered;
- (c) for a policy of insurance issued or to be issued; or
- (d) for a secondary obligation incurred or to be incurred;

however, the term does not include -

- (a) rights to payment evidenced by chattel paper or an instrument;
- (b) deposit accounts; or
- (c) letters of credit or rights to payment or performance under a letter of credit;

**“account debtor”** means the person who is obligated on an account, chattel paper, or other intangible property;

**“assignee”** means a person who takes an assignment;

**“assignor”** means the person who makes an assignment;

**“buyer in the ordinary course of business”** means a person that buys goods in good faith, without actual knowledge that the sale violates the rights of another person in the goods, in the ordinary course from a person other than a pawnbroker in the business of selling goods of that kind or a person buys goods in the ordinary course if the sale to the person conforms with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices;

**“cash proceeds”** includes proceeds that are money, cheques, deposit accounts;

**“chattel paper”** means a record that creates or evidences a debt and a security interest in, or a lease of, specific goods;

**“collateral”** means the personal property subject to a security interest;

**“consignment”** means a transaction, regardless of the form or terminology used in the agreement, 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, but the term excludes transactions involving goods that are consumer goods of the deliverer;

**“consumer goods”** means goods used or bought for use primarily for personal, family or household purposes;

**“debtor”** means the person who has rights in collateral, and includes the seller of accounts or chattel paper, and the lessee or consignee of goods that are collateral;

**“deposit account”** means a demand, time, savings, passbook, or similar account maintained with a bank;

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

“**equipment**” means goods that are not inventory, consumer goods, farm products, timber or minerals;

“**legal entity**” means a company, charitable trust, incorporated society, or other body organised under a law of the Kingdom that has capacity to contract;

“**farm products**” means goods produced or to be produced by a debtor engaged in farming, other than timber, which are –

- (a) crops grown, growing, or to be grown;
- (b) aquatic goods produced or to be produced in aquacultural operations;
- (c) livestock, including the unborn;
- (d) supplies used or produced, or to be used or produced, in a farming operation; or
- (e) products of crops or livestock in their un-manufactured state;

“**foreign legal entity**” means a company, charitable trust, incorporated society, or other body with capacity to contract that is organised or authorised by law other than the law of the Kingdom;

“**goods**” means personal property that are equipment, inventory, farm products, consumer goods, timber to be cut and removed for sale, and minerals to be extracted but it does not include accounts or chattel paper, money, documents or instruments;

“**guarantee**” means a secondary obligation that consists of an obligation to pay, or an issuer’s obligation to pay under a letter of credit, and that supports the payment on an account, chattel paper, document, instrument, or other intangible property;

“**initial notice**” is the notice to which an amendment, continuation statement, or termination statement may relate;

“**instrument**” means a negotiable instrument, including a writing that is evidence of a right to the payment of money, that is not itself a security agreement or lease, and that is of a type which is in the ordinary course of business transferred by delivery with any necessary endorsement or assignment and the term includes a share in a company, or a bond, if the share or bond is evidenced in writing;

“**inventory**” means goods other than farm products that are –

- (a) held for sale;
- (b) leased or held for lease; or
- (c) raw materials, work in process or materials used or consumed in a business;

**“lease of goods for a period greater than one year”** means –

- (a) a lease of goods for a stated duration of more than one year;
- (b) a lease of goods for an indefinite term;
- (c) a lease of goods for an initial term of one year or less if the lessee, with the consent of the lessor, retains uninterrupted or substantially uninterrupted possession of the leased goods for more than one year after the lessee first acquired possession of the goods, but the lease does not become a lease for a term of more than one year until the lessee's possession extends beyond one year; or
- (d) a lease of goods for a term of one year or less where the lease provides that it is renewable for any period that would cause the actual term of the lease to exceed one year;

**“lessee of goods in the ordinary course of business”** means a person who, in good faith and without actual knowledge that the lease is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in the ordinary course from a person in the business of selling or leasing goods of that kind;

**“lien holder”** means –

- (a) a person who obtains a judgment that acknowledges or creates a debt;
- (b) a bankruptcy trustee, or a manager or receiver in insolvency; or
- (c) any other person who obtains a right in collateral by operation of law other than a person who holds a right of retention as provided in this Act;

**“Minister”** means the Minister for Labour, Commerce, and Industries;

**“Ministry”** means the Ministry of Labour, Commerce, and Industries;

**“motor vehicle”** means an automobile, truck, trailer, or motorized boat, when held as equipment or consumer goods but not when held as inventory;

**“notice”** means a record registered or presented for registration in the registry;

**“other intangible property”** means any personal property other than goods, accounts, chattel paper, documents, instruments, and money;

**“proceeds”** means –

- (a) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (b) whatever is collected on, or distributed with respect to, collateral;
- (c) rights arising out of collateral;
- (d) to the extent of the value of collateral, claims arising out of the loss or nonconformity of, defects in, or damage to the collateral; or

- (e) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the collateral;

“**purchase**” means to take collateral as a buyer, a donee, a person receiving security such as a secured party, consignor, lessor, or mortgagee, or by any other voluntary transaction creating an interest in property;

“**purchase-money security interest**” means a security interest that is –

- (a) taken or retained by the seller of goods to secure all or part of its price; or
- (b) taken by a person other than the seller who gives value to enable the debtor to acquire rights in or the use of goods, if such value is in fact so used;

to avoid doubt –

- (a) the security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory; and
- (b) in a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status even if –
- (i) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;
- (ii) collateral that is not purchase-money collateral also secures the purchase-money obligation; or
- (iii) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured;

“**purchaser**” means a person who takes collateral by purchase;

“**record**” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form and includes a photocopy, facsimile copy, and electronic mail;

“**registry**” means the personal property securities registry established in Part III of this Act;

“**rental of a building or other improvement to real property for a period greater than one year**” means –

- (a) a rental of a building or improvement to real property for a stated duration of more than one year;
- (b) a rental of a building or improvement to real property for an indefinite term;
- (c) a rental of a building or improvement to real property for an initial term of one year or less if the tenant, with the consent of the landlord, retains uninterrupted or substantially uninterrupted possession of the property for more than one year after the landlord first acquired possession of the property, but the agreement does not become a rental of a building

or other improvement to real property for a period greater than one year until the renter's possession extends beyond one year; or

- (d) a rental of a building or improvement to real property for a term of one year or less where the agreement provides that it is renewable for any period that may cause the actual term to exceed one year;

**“secured party”** means a lender, seller or other person in whose favour a security interest is created or provided for under a security agreement, including a person to whom accounts or chattel paper have been sold, and a consignor or lessor of goods, including the representative of any such person or groups of persons;

**“security agreement”** means an agreement that creates or provides for a security interest;

**“security interest”** means a property right in collateral that secures performance of an obligation;

**“sign”** means –

- (a) to physically execute a signature; or  
(b) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent to identify the person and adopt or accept a record; and

**“value”** means the rights a person acquires –

- (a) in return for a binding commitment to give credit, whether or not drawn upon;  
(b) as security for or satisfaction of a pre-existing claim, in whole or in part;  
(c) by accepting delivery pursuant to a pre-existing contract for purchase;  
(d) in return for anything given in exchange; or  
(e) for any promise.

### **3 Act binds Crown**

This Act shall bind the Crown.

### **4 Act to prevail**

If there is a conflict between a provision of this Act and any other enactment, this Act shall prevail unless the other enactment specifically cites or expressly amends the conflicting provision of this Act.

### **5 Scope**

- (1) This Act applies to –

- (a) all transactions where the effect is to secure an obligation with collateral, including pledge, hire-purchase, conditional sale, company charge, chattel mortgage, assignment, and the like;
  - (b) the sale of accounts and chattel paper;
  - (c) consignments;
  - (d) the lease of goods for a period greater than one year;
  - (e) a security interest in a building or other improvement to real property, and to the rental of a building or other improvement to real property for a period greater than one year; and
  - (f) the interest of a lien holder in collateral.
- (2) (a) This Act applies without regard to the form of an agreement or the terminology used in an agreement, and whether ownership of the collateral is held by the secured party or the debtor.
- (b) The retention of title by a seller of goods has no effect other than the taking of a security interest in the goods.
- (3) Notwithstanding subsection (1), this Act does not apply to –
- (a) the transfer of an interest in real property, except as provided with respect to crops, timber to be cut, or minerals to be extracted;
  - (b) the transfer of a claim for compensation of an employee;
  - (c) a sale of accounts or chattel paper as part of a sale of the business out of which they arose;
  - (d) an assignment of accounts, chattel paper, or instruments for the purpose of collection only;
  - (e) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract; and
  - (f) the transfer of an interest in a flagged vessel subject to the maritime and admiralty law of the Kingdom.

## 6 Security interest

- (1) Any person may give a security interest in collateral, and any person may take a security interest in collateral.
- (2) Notwithstanding subsection (1), no security interest other than a purchase-money security interest may be given or taken in consumer goods.
- (3) A security interest may not be deemed invalid because the debtor has the right to use, possess, sell, exchange, commingle, or otherwise dispose of the collateral.
- (4) A security interest in collateral also constitutes a security interest in any guarantee with respect to the collateral.

**7 Secured obligation**

- (1) A security interest may secure one or more obligations.
- (2) Secured obligations may be –
  - (a) described specifically or in general terms;
  - (b) monetary or non-monetary obligations; or
  - (c) governed by foreign law.
- (3) A security interest may secure future obligations, whether mandatory, conditional, or optional.
- (4) A security interest may secure pre-existing obligations.

**8 Collateral and collateral description**

- (1) Collateral may be:
  - (a) personal property –
    - (i) of any nature, including tangible and intangible personal property;
    - (ii) that exists at the time of the conclusion of the security agreement or that is described in the security agreement but arises at a later time; or
    - (iii) that is in or outside of the Kingdom,
  - (b) goods sold or leased (no matter what the duration of the agreement) under a hire-purchase agreement, an agreement denominated as a lease but is actually a transaction for security, or other title-retention scheme;
  - (c) accounts or chattel paper that have been sold;
  - (d) goods that are consigned;
  - (e) proceeds of collateral;
  - (f) timber, or minerals;
  - (g) goods leased for a period greater than one year; or
  - (h) a building or other improvement to real property to which a security interest is attached or that is rented for a period exceeding one year.
- (2) A description of collateral in a security agreement or notice is sufficient if it –
  - (a) identifies collateral by item or kind in a manner that enables the collateral to be identified;
  - (b) consists of a statement that a security interest is taken in all of the debtor's present and after-acquired property; or
  - (c) consists of a statement that a security interest is taken in all of the debtor's present and after-acquired property except for specified items or kinds of personal property.

- (3) The provisions of this Act with regard to rights and obligations apply whether title to collateral is held by the secured party or the debtor.

## **9 Effectiveness of security agreement**

- (1) A security agreement shall be in the form of a record and may be found in multiple records when read together.
- (2) A security agreement is effective according to its terms –
  - (a) between the parties;
  - (b) against purchasers of the collateral; and
  - (c) against creditors and lien holders,except as otherwise provided in this Act.

## **10 Collateral in secured party's possession**

- (1) A secured party shall use reasonable care in the physical custody and preservation of collateral in his possession.
- (2) Unless otherwise agreed, if collateral is in the secured party's possession –
  - (a) reasonable expenses shall be charged to the debtor and secured by the collateral, including the cost of any insurance, and the payment of taxes or fees associated with the collateral;
  - (b) the risk of accidental loss or damage is borne by the debtor to the extent of a deficiency in any insurance coverage; or
  - (c) the secured party may hold as additional security any increases received from the collateral except money, and shall apply money to reduce the secured obligation unless the money is remitted to the debtor.

## **11 Request for accounting or statement of account**

- (1) A debtor may request:
  - (a) an accounting of the unpaid obligations secured by collateral;
  - (b) that a secured party approve or correct a list of what the debtor believes to be the collateral securing an obligation; or
  - (c) that a secured party approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date.
- (2) A secured party shall comply with a request under subsection (1) within two weeks after receipt.
- (3) (a) A debtor is entitled without charge to one response to a request under this section during any six-month period.

- (b) The secured party may require payment of a reasonable charge for each additional response within a six-month period.
- (4) (a) An account debtor that has received notification of an assignment of the account is entitled to receive from the assignee a signed record that releases the account debtor from any further obligation to the assignee, if –
  - (i) there is no outstanding secured obligation; and
  - (ii) the assignee has no commitment to make advances, incur obligations, or otherwise give value.
- (b) The release shall be sent as soon as reasonably practicable, but not more than ten days after the secured party receives a demand from the debtor.
- (c) This subsection does not apply to the sale of an account or chattel paper.

## **12 Attachment of security interest to collateral**

- (1) A security interest attaches to collateral and becomes enforceable against the debtor and third parties with respect to the collateral only if –
  - (a) the debtor has signed a security agreement that provides a description of the collateral;
  - (b) value has been given by the secured party to the debtor; and
  - (c) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party.
- (2) The attachment of a security interest to collateral gives the secured party the right to proceeds and is also attachment of a security interest in a supporting obligation for the collateral, unless otherwise agreed.
- (3) The attachment of a security interest to a right to payment or performance secured by a security interest in personal property or a mortgage in real property is also attachment of a security interest to the security interest or mortgage.
- (4) Goods shall be determined to be equipment, inventory, farm products or consumer goods at the time that a security interest attaches to the goods.

## **PART II – PERFECTION AND PRIORITY OF SECURITY INTERESTS, AND THE RIGHTS OF THIRD PARTIES**

### **13 Perfection of security interest**

- (1) A security interest is perfected when it has attached to the collateral and a means of perfection has been completed as follows –
  - (a) the registering of a notice in the registry;
  - (b) possession of the collateral by the secured party;
  - (c) control of a deposit account by the secured party; or
  - (d) perfection upon attachment of the security interest to collateral, without registering a notice.
- (2) A notice shall be registered in the registry to perfect a security interest, unless this Part provides otherwise.

### **14 Perfection by possession**

- (1) A security interest in goods, instruments, documents or chattel paper may be perfected by the secured party's taking possession, and without registering a notice.
- (2) A security interest in money may be perfected only by the secured party's taking possession of the money, except for cash proceeds.
- (3) A security interest is perfected by possession from the time of possession and continues only so long as possession is retained.
- (4) A security interest, other than a security interest in money, perfected by possession under this section may also be perfected by registering a notice before, during, or after a period of possession by a secured party.

### **15 Perfection by control**

A security interest in a deposit account may be perfected by the secured party's taking control of the deposit account, and without registering a notice.

### **16 Perfection without registering a notice**

The following security interests are perfected when they attach to the collateral and without the registering of a notice –

- (a) a purchase-money security interest in consumer goods;
- (b) a security interest in proceeds, if the underlying security interest is perfected; or

- (c) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder.

## **17 Security interest in a motor vehicle**

A security interest in a motor vehicle may be perfected by registering a notice that describes the motor vehicle generally or by serial number.

## **18 Security interests in documents and goods covered by documents**

- (1) While goods are in the possession of a bailee that has issued a document covering the goods, a security interest in the goods may be perfected by perfecting a security interest in the document.
- (2) A security interest perfected in the document prevails over any security interest in the goods perfected by registering a notice during the period that goods are in the possession of the bailee.

## **19 Perfection of security interests in supporting obligations**

- (1)
  - (a) Perfection of a security interest in collateral also perfects a security interest in a guarantee supporting the collateral.
  - (b) The registering of a notice is not necessary to perfect a security interest in a guarantee.
- (2) Perfection of a security interest in a right to payment or performance also perfects a security interest in a mortgage on real property securing the right to payment.

## **20 Continuity of perfection**

- (1) A security interest is perfected continuously if it is first perfected in one manner and later perfected in another manner, provided that there is no period in which it is not perfected.
- (2) If a secured party assigns a perfected security interest, a notice may not be registered under this Act to continue perfection of the security interest against creditors of the debtor, transferees from the debtor, and lien holders.

## **21 Priority**

- (1) The priority of a security interest is measured from the time –
  - (a) the first notice is registered covering the collateral; or
  - (b) the security interest is first perfected,

whichever is earlier, if there is no time after the first time of registration or perfection at which the notice was ineffective or the continuity of perfection was interrupted.

- (2) Unless otherwise provided in this Act, among conflicting security interests –
  - (a) the first security interest to attach to collateral has priority among security interests for which no effective notice covers the collateral and for which there is no perfection;
  - (b) a perfected security interest has priority over a security interest that is not perfected; and
  - (c) the first security interest for which a notice is registered or for which there is perfection has priority where conflicting security interests are perfected.
- (3) A date of registration or perfection as to collateral is deemed to be the date of registration or perfection of a security interest in proceeds.

## 22 Priority of lien holder

A security interest has priority over the rights of a lien holder unless a notice of the rights of the lien holder is registered in accordance with this Act –

- (a) before the security interest is perfected; or
- (b) before a notice covering the collateral is registered and a security agreement is signed by the debtor.

## 23 Buyers of collateral

- (1)
  - (a) A buyer takes collateral free of a security interest if the buyer gives value for the collateral without actual knowledge of the security interest and before it is perfected.
  - (b) If the collateral is tangible, the buyer shall also take delivery of the collateral without actual knowledge of the security interest and before it is perfected.
- (2) Notwithstanding subsection (1), a buyer in the ordinary course of business takes goods free of a security interest in the goods, notwithstanding if the security interest is perfected and the buyer knows of its existence.
- (3) Notwithstanding subsections (1) and (2) –
  - (a) a buyer of goods that are consumer goods of the seller takes the goods free of a security interest whether or not the security interest is perfected, if –
    - (i) the person buys and takes delivery of the goods without actual knowledge of the security interest; and
    - (ii) before a notice is registered that describes the goods; or

- (b) a person who buys farm products for use as consumer goods takes the farm products free of any security interest.
- (4) Notwithstanding subsections (1), (2), and (3), a person who buys –
  - (a) a motor vehicle takes the motor vehicle free of a prior security interest only if –
    - (i) the person buys without actual knowledge of the security interest; and
    - (ii) the motor vehicle was not described, or was incorrectly described, by serial number in a registered notice; or
  - (b) a building takes the building free of a prior security interest only if –
    - (i) the person buys without actual knowledge of the security interest; and
    - (ii) the building was not described, or was incorrectly described, in the registry by the parcel number assigned by the land registry to the parcel on which the building sits.

## **24 Lessees of goods and buildings**

- (1) A lessee of goods takes its leasehold interest free of a security interest in the goods if the lessee receives delivery of the goods –
  - (a) without actual knowledge of the security interest; and
  - (b) before the security interest is perfected.
- (2) Notwithstanding subsection (1), a lessee -
  - (a) in the ordinary course of business takes the leasehold interest free of a security interest in the goods even if the security interest is perfected and even if the lessee knows of its existence; or
  - (b) takes a motor vehicle free of a security interest only if the lessee leased –
    - (i) without actual knowledge of the security interest; and
    - (ii) the motor vehicle was not described, or was incorrectly described, by serial number in a registered notice.
- (3) Notwithstanding subsections (1) and (2), a person who rents a building takes free of a prior security interest only if –
  - (a) the person rents without actual knowledge of the security interest; and
  - (b) the rented building was not described, or was incorrectly described, in the registry by the parcel number assigned by the land registry to the parcel on which the building sits.

**25 Disposition of collateral and perfection in proceeds**

- (1) A security interest continues in collateral notwithstanding sale, lease, license, exchange, or other disposition of the collateral, except as otherwise provided in this Act or agreed upon by the parties.
- (2) Upon the disposition of collateral, a security interest attaches to proceeds of the collateral, except as otherwise provided in this Act or agreed upon by the parties.
- (3)
  - (a) A security interest in proceeds is a continuously perfected security interest if the security interest in the original collateral was perfected.
  - (b) The security interest in proceeds becomes unperfected 20 days after the debtor receives the proceeds unless –
    - (i) a registered notice covers the original collateral, and the proceeds are cash proceeds or proceeds of a nature described in the notice; or
    - (ii) the security interest in the proceeds is perfected before the expiration of the 20-day period.

**26 Notice of purchase-money security interest**

If a person registers a notice with respect to a purchase-money security interest in goods before or within 5 days after the debtor takes possession of the goods, the security interest has priority over the rights in the goods of a buyer, lessee, or lien holder which arise between the time the security interest attaches and the time of registering of the notice.

**27 Priority of purchase-money security interest in equipment**

A perfected purchase-money security interest in equipment has priority over a conflicting security interest in the same collateral and the interest of a lien holder, and also has priority in its proceeds, if the purchase-money security interest is perfected when the debtor receives possession of the equipment, or within 5 days thereafter.

**28 Priority of purchase-money security interest in inventory or livestock**

- (1) A perfected purchase-money security interest in inventory or livestock has priority over a conflicting security interest in the same inventory or livestock if –
  - (a) the purchase-money security interest is perfected when the debtor receives possession of the inventory or livestock; and
  - (b) the purchase-money secured party notifies in writing the holder of the conflicting security interest if the holder had registered a notice

covering the same types of inventory or livestock before the time of a notice registered by the purchase-money secured party.

- (2) A notification under subsection (1)(b), shall describe the inventory or livestock and state that the person giving the notification has or expects to acquire a purchase-money security interest in inventory or livestock of the debtor.

## **29 Priority of lien arising by operation of law**

A lien or right of retention in goods arising by operation of law in favour of a person to secure payment for materials or services with respect to the goods has priority over a perfected security interest while the goods are in the possession of the person holding the lien or right of retention if the person provided the materials or services in the ordinary course of business.

## **30 Crops**

A perfected security interest in crops growing on real property has priority over a conflicting interest of the owner, a lessor, or a mortgagee if the debtor is in possession of the real property or has an interest in the real property that is registered in accordance with the real property law.

## **31 Accessions**

- (1) For the purposes of this section, “accession” means goods that are physically united with other goods in a manner such that the identity of the goods is not lost.
- (2)
  - (a) A security interest may be created in an accession and continues in collateral that becomes an accession.
  - (b) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the accession.
- (3) Upon default, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.
- (4) Upon default –
  - (a) a secured party that removes an accession shall promptly reimburse the holder (other than the debtor) of any interest in the whole or the other goods for the cost of repair of any physical injury to the whole;
  - (b) a secured party that removes accessions shall promptly reimburse any other secured party for the cost of repair of any damage to the property;
  - (c) the secured party need not reimburse the debtor or other secured party for any diminution in value caused by the absence of the goods removed or by any necessity for replacing them; pe

- (d) a person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

### **32 Commingled goods**

- (1) For the purposes of this section, “commingled goods” means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.
- (2) A security interest shall not be created in commingled goods but may attach to a product or mass that results when goods become commingled goods.
- (3) If collateral becomes commingled goods, a security interest in the collateral attaches to the product or mass.
- (4)
  - (a) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass is perfected without the need for registering a notice.
  - (b) The priority of the security interest in the product or mass is measured from the time of perfection of the security interest in the collateral that became commingled.
- (5) If more than one security interest attaches to the product or mass –
  - (a) a security interest that is perfected has priority over a security interest that is unperfected at the time the collateral becomes commingled goods;
  - (b) the first security interest to attach to the product or mass has priority among unperfected security interests; and
  - (c) if more than one security interest is perfected, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

### **33 Purchase of chattel paper and instruments**

A purchaser of chattel paper or instruments has priority over a conflicting security interest in the chattel paper or instruments and also has priority with respect to the proceeds of the chattel paper or instruments if –

- (a) in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or instruments; and
- (b) the chattel paper or instruments do not indicate an assignment to the person holding the conflicting security interest.

**34 Priority of rights of purchasers of instruments, documents, and securities**

- (1) (a) This Act does not limit the rights of –
  - (i) a holder in due course of a negotiable instrument;
  - (ii) a holder to which a negotiable document of title has been duly negotiated; or
  - (iii) a protected purchaser of a security.
- (b) These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in the law on negotiable instruments.
- (2) Registering a notice does not constitute notice of a claim or defence to the holders, purchasers, or persons described in subsection (1).

**35 Assignments**

- (1) A person may assign all or part of the person's rights in accounts, chattel paper, instruments, or other intangible property.
- (2) The assignee is subject to all the terms of the agreement between the account debtor and assignor.
- (3) No communication to the account debtor shall be required for attachment, perfection or enforcement of a security interest arising from an assignment, except as provided in this section.
- (4) (a) The account debtor shall perform the obligation by paying the assignee after receiving written advice of an assignment from the assignor or assignee.
  - (b) Before performing the obligation the account debtor may require, the assignee to furnish timely and sufficient evidence of the assignment.
  - (c) If the assignee fails to comply under paragraph (b), the account debtor may perform the obligation by paying the assignor.
- (5) Unless an account debtor has made an enforceable agreement not to assert defences or claims, the rights of an assignee are subject to –
  - (a) all terms of the agreement between the account debtor and assignor and any defence or claim in recoupment arising from the transaction that gave rise to the contract; and
  - (b) any other defence or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee;

provided, however, that the claim of an account debtor against an assignor may be asserted against an assignee only to reduce the amount the account debtor owes.

- (6) An agreement between a secured party and an account debtor is unenforceable if it prohibits, requires consent, or otherwise restricts –
- (a) the creation, attachment, or enforcement of a security interest; or
  - (b) the sale or assignment of an account, a lease, or chattel paper.

### **36 Future advances**

If a perfected security interest secures an obligation by the secured party to make future advances, the rights of a lien holder have priority over the security interest with respect to advances made –

- (a) after the secured party has actual knowledge of the interest of the lien holder; or
- (b) more than twenty days after a notice of the interest of the lien holder is filed in the filing office, whichever occurs first.

### **37 Control of deposit account**

- (1) A secured party has control of a deposit account if –
- (a) the secured party is the bank with which the deposit account is maintained;
  - (b) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or
  - (c) the secured party becomes the bank's customer with respect to the deposit account.
- (2) A secured party that has satisfied subsection (1) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

### **38 Priority of conflicting security interests in deposit accounts**

- (1) A security interest held by a secured party having control of a deposit account has priority over a conflicting security interest held by a secured party that does not have control.
- (2) Except as otherwise provided in subsections (3) and (4), security interests perfected by control have priority according to the time of obtaining control.
- (3) Except as otherwise provided in subsection (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.
- (4) A security interest in a deposit account perfected has priority over a security interest held by the bank with which the deposit account is maintained if the

secured party has become the customer of the bank with respect to the deposit account.

### **39 Transfers of money and funds from deposit accounts**

- (1) 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 the secured party.
- (2) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

### **40 Right of recoupment or setoff**

- (1) Except as otherwise provided in subsection (2), a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.
- (2) A setoff by a bank based on a claim against a debtor is ineffective against a secured party that has established control of a deposit account by becoming the bank's customer with respect to the deposit account.

### **41 Modification of priority**

A person entitled to priority under this Act may agree to modify or forego the priority.

## **PART III – REGISTRATION**

### **42 Registry**

- (1) A personal property securities registry shall be established in the Ministry.
- (2) The Minister shall appoint a Registrar to administer the day-to-day activities of the registry.
- (3) The Ministry shall provide electronic means for all registering of notices and searching, and the electronic records of the registry shall be the official records.
- (4) All obligations of the Ministry under this Act shall be fully discharged by the creation and business like maintenance of an electronic information system that provides for the registering of notices of security interests and notices of the interests of lien holders, and for the search of such notices by any person.

- (5) No person shall have a claim against the Ministry for errors in the registry committed by a person who registers a notice, or for failure to provide registry services for reasons beyond the control of the Ministry.
- (6) The duties of the Registrar are merely administrative –
  - (a) by registering a notice or refusing to register a notice, the Registrar does not determine the sufficiency, correctness, authenticity, or validity of the notice or any information contained in the notice; and
  - (b) the registering of a notice does not create a security interest in collateral and does not provide evidence that a security interest in collateral exists.
- (7) The personal property securities registry is the place to register -
  - (a) a notice of a security interest in collateral;
  - (b) a notice of the interest of a lien holder; and
  - (c) a notice of the interest of a secured party in a transaction concluded prior to the effective date of this Act as provided in this Act.

#### **43 Notice of the interest of a lien holder**

- (1) The Ministry shall adopt electronic forms for the submission of notices of the interest of a lien holder.
- (2) The notice of the interest of a lien holder shall be limited to –
  - (a) identification of the lien holder;
  - (b) identification of the person owing payment or performance to the lien holder; and
  - (c) a description of movable property against which the lien holder claims a right,

in the same manner as provided in this Act for the registering a notice of a security interest.

#### **44 Access to registry records**

- (1) The following are deemed, public records –
  - (a) information contained in notices; and
  - (b) indexes and other records created by the registry with respect to notices, in any form or medium.
- (2) Any person has a right to inspect and obtain copies of the records of the registry.

**45 Initial notice**

- (1) An initial notice is sufficient if it –
  - (a) identifies the debtor and provides a mailing address;
  - (b) identifies the secured party and a mailing address; and
  - (c) describes the collateral covered by the notice.
- (2)
  - (a) A person is entitled to register an initial notice only if the debtor authorises the registration in a signed record.
  - (b) The debtor's authorisation need not be contained in the notice, need not be disclosed to the Registrar, and may be given after registration.
- (3) By signing a security agreement, a debtor authorises the registration of an initial notice covering the collateral described in the security agreement, and proceeds of the collateral, whether or not the security agreement expressly covers proceeds.
- (4) A notice may be registered before a security agreement is concluded or before a security interest attaches to collateral.
- (5) A notice substantially complying with the requirements of this Act is effective, even if it is insufficient under this section, unless the insufficiency makes the notice seriously misleading.

**46 Name of debtor and secured party**

- (1) A notice sufficiently provides the name of the debtor, where the debtor is a –
  - (a) citizen of the Kingdom and the notice contains his full name;
  - (b) natural person and not a citizen of the Kingdom and the notice contains the name of the person as stated in his passport;
  - (c) legal entity registered under Tongan law, and the notice contains the name of the debtor as shown on the appropriate registry;
  - (d) legal entity for which there is no registry and the notice contains the name of the entity as it appears on the charter document of the entity;
  - (e) foreign legal entity registered under Tongan law and the notice provides the name of the debtor as shown in the registry; or
  - (f) foreign legal entity not registered under Tongan law and the notice provides the name of the debtor as shown on the appropriate registry in the country where the foreign entity is organized.
- (2) A notice that provides only the debtor's trade name does not sufficiently provide the name of the debtor.
- (3) A notice may provide the name of more than one debtor and the name of more than one secured party.

- (4) The failure of a person to indicate on a notice that a person is a representative of the secured party does not affect the sufficiency of a notice.

#### **47 Effect of changes in circumstance**

- (1) A registered notice remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest continues, even if the secured party knows of or consents to the disposition.
- (2)
  - (a) If a debtor changes its name so that a registered notice becomes seriously misleading, the notice is effective to perfect a security interest in collateral acquired by the debtor before or within four months after the change.
  - (b) The notice is effective to perfect a security interest in collateral acquired by the debtor more than four months after the change only if an amendment to the notice is registered within four months of the change that changes the name.
- (3) Notwithstanding subsection (2), a notice remains effective if, after the notice is registered, a change of circumstances renders the notice seriously misleading.

#### **48 Duration of notice and effect of lapse**

- (1) A registered notice is effective for a period of 5 years after the date of registration, unless the notice is continued or terminated.
- (2) The effectiveness of a registered notice lapses on the expiration of the 5 year period unless, before the lapse, a continuation statement is registered.
- (3) A notice becomes ineffective upon lapse and any security interest that was perfected by the notice becomes unperfected, unless the security interest is perfected without registration.
- (4) If the security interest becomes unperfected upon lapse, it is deemed never to have been perfected against a purchaser of the collateral for value.

#### **49 Amendment of notice**

- (1) An initial notice may be amended by one or more amendments and shall –
  - (a) identify the initial notice by its registration number;
  - (b) identify the secured party on the notice who authorises the amendment;
  - (c) indicate that it is an amendment to the notice; and
  - (d) provide all of the information required of an initial notice, completely restating the notice in a manner that reflects the amended state of the notice.

- (2) (a) An amendment that adds collateral covered by a notice, or adds a debtor to a notice, is effective if the debtor authorizes the registration in a signed record.
- (b) By signing a security agreement, a debtor authorizes the registration of an amendment, covering the collateral described in the security agreement, and proceeds of the collateral, whether or not the security agreement expressly covers proceeds.
- (3) If there is more than one secured party on the notice, the amendment is effective if a secured party authorises the registration in a signed record.
- (4) An amendment that adds collateral is effective as to the added collateral only from the date of the registration of the amendment.
- (5) An amendment that adds a debtor is effective as to the added debtor only from the date of the registration of the amendment.
- (6) An amendment other than an amendment to add collateral or add a debtor is effective only if a secured party on the notice authorises the registration of the amendment in a signed record.
- (7) An amendment is ineffective if it purports to delete—
  - (a) all secured parties and fails to provide the name of a new secured party; or
  - (b) the names of all debtors and fails to provide the name of a debtor not previously named on the notice.
- (8) If there is more than one secured party on the notice, any secured party or all secured parties may authorise the registration of an amendment.
- (9) The registration of an amendment does not extend the period of effectiveness of a notice.

## 50 Continuation of notice

- (1) The period of effectiveness of a notice may be continued by registering a continuation statement that –
  - (a) identifies the initial notice by its registration number;
  - (b) identifies a secured party on the notice who authorises the continuation statement; and
  - (c) indicates that the effectiveness of the notice, with respect to the secured party who authorised the registration, is to be continued.
- (2) A continuation statement may be registered only within six months before the expiration of the 5-year period of the notice –
  - (a) upon timely registration of a continuation statement, the effectiveness of the notice continues for a period of 5 years commencing on the day

- on which the notice would have become ineffective in the absence of the registration;
- (b) the effectiveness of a notice is continued only with respect to the secured party who authorised the registration of the continuation statement; or
  - (c) upon the expiration of the new 5-year period, the notice lapses with respect to the secured party unless, before the lapse, another continuation statement authorised by that secured party is registered and succeeding continuation statements may be registered in the same manner to continue the effectiveness of the notice.

## 51 Termination of notice

- (1) The effectiveness of a notice may be terminated by registering a termination statement that –
  - (a) identifies the initial notice by its registration number;
  - (b) identifies a secured party on the notice who authorises the termination statement; and
  - (c) indicates that the notice is no longer effective with respect to the interest of the secured party who authorised the registration of the termination statement.
- (2) Within 20 days after the secured party receives a written demand by the debtor, the secured party on a notice shall register a termination statement if –
  - (a) there is no outstanding secured obligation and no commitment to make an advance, incur an obligation, or otherwise give value;
  - (b) the debtor did not authorise the registration of the initial notice; or
  - (c) the notice covers accounts or chattel paper that have been sold but as to which the account debtor or other person obligated has discharged its obligation.
- (3)
  - (a) A termination statement terminates the effectiveness of a notice with respect to a secured party on the notice only if the termination statement is authorised in a signed record by that secured party.
  - (b) Upon the registration of an effective termination statement, the notice to which the termination statement relates becomes ineffective with respect to the authorizing secured party.

## 52 Effectiveness of notice

- (1) An initial notice, amendment, continuation statement, or termination statement is effective at the time it is available to the public by means of a search of the records of the registry as provided in this Act.
- (2) The Registrar may refuse to register a notice only because –

- (a) in the case of an initial notice, the record does not provide the name of a debtor;
  - (b) in the case of an amendment, the record does not provide the name of a debtor, does not provide the registration number of the initial notice, or the record identifies an initial notice whose effectiveness has lapsed;
  - (c) in the case of a continuation statement, the record does not provide the registration number of the initial notice, or was not submitted within the permitted six-month time period;
  - (d) in the case of a termination statement, the record does not provide the registration number of the initial notice, or the record relates to an initial notice that has lapsed with respect to each secured party on the notice; or
  - (e) less than the full registration fee is tendered, or no other arrangement has been made for the payment of the fee.
- (3) A record that the Registrar refuses to accept for a reason other than one set forth in this section is effective as a registered record except against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the registry.
- (4) If a Registrar refuses to accept a record for registration, it shall promptly communicate the fact of and reason for its refusal to the person that presented the record.
- (5) A notice authorised by one secured party on the notice does not affect the rights of another secured party on the notice.
- (6) The failure of the Registrar to index a record correctly does not affect the effectiveness of the record.

### **53 Duties of the Registrar**

- (1) For each notice registered, the Registrar shall –
- (a) assign a unique registration number in the case of an initial notice;
  - (b) assign a unique number to notices other than the initial notice;
  - (c) create a record that bears the registration number and the date and time of registration; and
  - (d) maintain the registered record for public inspection.
- (2) The Registrar shall maintain the capability to retrieve a record by the name of the debtor and by the registration number assigned to the initial notice to which the record relates, and that associates an initial notice and all records relating the initial notice with one another.
- (3) The Registrar shall maintain records of lapsed or terminated notices for a period of ten years beyond the date of lapse or termination.

**54 Information from registry**

- (1) The Registrar shall communicate the following information to any person that requests it—
  - (a) whether there is registered on a date and time specified by the registry, any notice that designates a particular debtor and has not lapsed with respect to all secured parties;
  - (b) the registration number, and the date and time of registration of each notice;
  - (c) the name and address of each debtor and secured party on each notice; or
  - (d) all of the information contained in each notice.
- (2) A request may be made to search the records of the registry by any of the following criteria –
  - (a) the registration number of a notice;
  - (b) the name of a debtor;
  - (c) the serial number of a motor vehicle; or
  - (d) the parcel number relating to a building.
- (3) In complying with its duty, the Registrar may communicate information in any medium.
- (4) If requested, the Registrar shall communicate information by issuing a written certificate that can be admitted into evidence in the courts without being required to prove its authenticity.

**PART IV – ENFORCEMENT REGIME****55 Default**

- (1) The parties to a security agreement are free to define default with respect to the agreement.
- (2) Upon default, the secured party shall have –
  - (a) the right to possession or control of the collateral, as the secured party prefers, even if the security agreement is silent about possession or control;
  - (b) the right to dispose of the collateral;
  - (c) other rights and remedies provided in this Act;
  - (d) other rights and remedies in the security agreement; and
  - (e) rights and remedies under the law.

- (3) The secured party may pursue any or all of its remedies simultaneously or consecutively and pursuit of one remedy does not preclude or prejudice the pursuit of another remedy.
- (4) Upon default, if the collateral is a document, the secured party may proceed as to the document and as to the goods covered by the document and the secured party may proceed without judicial action if he is in possession of the document.
- (5) A lessor of goods for a period greater than one year retains the common law rights of a lessor upon default, and any other rights that may be provided under any other enactment.
- (6) A landlord who rents a building for a period greater than one year retains the common law rights of a landlord upon default, and any other rights that may be provided under any other enactment.

## **56 Collection rights of secured party**

- (1) Upon default, with respect to accounts, chattel paper, or other rights to payment, the secured party is entitled to notify an account debtor or other person who owes payment to make payment to the secured party, and also to take possession or control of any proceeds.
- (2)
  - (a) If the security interest secures a debt, the secured party shall pay the debtor any amount collected in excess of the secured debt, plus expenses allowed under this Part.
  - (b) Unless otherwise agreed, if there is a deficiency in collection, the debtor owes to the secured party the difference between the amount collected and the secured debt plus expenses allowed under this Part.
- (3) If the transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus and is liable for any deficiency only if the security agreement so provides.
- (4) The secured party may act under this section without judicial process, notwithstanding any other provision of this Act.
- (5) If so agreed, and in any event after default –
  - (a) a secured party that is a bank with a security interest in a deposit account maintained by the bank and perfected by control may apply the balance of the deposit account to the obligation secured by the deposit account; and
  - (b) in other cases, a secured party that has a security interest in a deposit account perfected by control may instruct the bank to pay the balance of the deposit account to the secured party.

**57 Secured party's right to possession or control**

- (1) Upon default, the secured party may take possession or control of collateral without legal proceedings if the secured party does not breach the peace.
- (2)
  - (a) Upon default, the secured party shall be entitled to a special, expedited order from the court granting the secured party possession or control over the collateral.
  - (b) Issues at the hearing are limited to the existence of a security agreement covering the collateral and at least one event of default.
  - (c) An order to dispossess the debtor under this section may be appealed by the debtor, but no court shall stay the dispossession order or prevent the disposal of the collateral during the appeal process.
- (3) If the security agreement so provides, the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.
- (4) A secured party may render equipment unusable without removing it from its location, and may dispose of collateral on the debtor's place of business, residence, or any other location where the collateral is found.

**58 Secured party's disposal of collateral after default**

- (1) After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral.
- (2) Disposal of the collateral may be made publicly or privately, and may be made in one or more contracts.
- (3) Disposal may be as a unit or in parcels and at any time and place and on any terms consistent with the secured party's duties under this Act.
- (4)
  - (a) The secured party shall give the debtor, and any other secured party from whom the secured party receives a written request, reasonable notice of the time and place of any public sale or the time at which any private sale or other intended disposal is to be made, unless communication is impractical because collateral is perishable or threatens to decline speedily in value.
  - (b) The debtor may waive the right to be informed.
- (5) The secured party may buy at any sale that is open to the public.
- (6)
  - (a) Upon default, a secured party holding a security interest in a building or other improvement to real property may remove the building or improvement.
  - (b) A secured party shall promptly reimburse the owner or mortgagee other than the debtor for the cost of repair caused by damage to the real property in the removal, but the secured party need not reimburse for

any diminution in value caused by the absence of the building or improvement or by any necessity to replace them;

- (c) A person entitled to reimbursement and who controls access to the building or improvement may refuse access to the property for the purpose of removal until the secured party gives adequate assurance for the performance of the obligation to reimburse.

## **59 Consequences of disposal of collateral**

- (1) The proceeds of disposal shall be applied in the following order –
  - (a) the reasonable expenses of retaking, holding, preparing for disposal, and disposing of the collateral, including reasonable lawyer fees and legal expenses incurred by the secured party;
  - (b) the satisfaction of the secured obligation; and
  - (c) the satisfaction of debt secured by any subordinate security interest in the collateral if a written demand is received before distribution of the proceeds is completed and the holder of a subordinate security interest gives reasonable proof of the interest.
- (2) The secured party shall account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency.
- (3) When the secured party transfers the debtor's property to a purchaser who acts in good faith and gives value for the collateral, the secured party transfers all its rights in the collateral to the purchaser and the security interest and all subordinate security interests and claims are discharged.
- (4) The Registrar of any registry maintaining records of ownership of the collateral, shall issue a new title to a purchaser for value, and if the Registrar requests, the secured party shall provide authorization for the issuance of the new title in the form of a court order granting possession to the secured party, or the secured party's sworn affidavit that the transfer is made pursuant to this Act.

## **60 Retention of collateral**

- (1) A secured party may, after default, propose to retain the collateral in full or partial satisfaction of the secured obligation.
- (2) The proposal shall be given to the debtor and to any other secured party from whom the secured party has received a written claim of an interest in the collateral.
- (3) If the secured party receives objection in writing from a person entitled to receive notice under subsection (2) within 20 days after the notice was delivered, the secured party shall dispose of the collateral as provided in this Part.

- (4) If no objection is received within the 20-day period, the secured party may retain the collateral.

### **61 Debtor's right to redeem collateral**

- (1) Unless otherwise agreed in writing after default, the debtor or any other secured party may redeem the collateral by fulfilling all obligations secured by the collateral and by paying expenses reasonably incurred by the secured party in taking possession, holding and preparing the collateral for disposal, including reasonable lawyer fees and legal expenses.
- (2) Redemption may take place only before the secured party has disposed of collateral or entered into a contract for its disposal or before the obligation has been discharged or the collateral has been retained as provided in this Part.

### **62 Secured party's liability for failure to comply with enforcement rules**

- (1) If the secured party does not comply with the requirements of this Act with respect to enforcement, disposal of collateral may be ordered or restrained by the court on appropriate terms and conditions.
- (2) If the disposal has occurred, the debtor or any person entitled to be informed or whose security interest has been made known to the secured party prior to the disposal has a right to recover from the secured party any loss caused by a failure to comply with this Part.

## **PART V – OFFENCES**

### **63 Offences**

- (1) A person who registers a notice with malicious intent or fraudulently, commits an offence and shall be liable upon conviction to a fine not exceeding \$20,000 or imprisonment for a period not exceeding 5 years or both.
- (2) Any person who wilfully and without proper authorization destroys or tampers with any record that is in the registry, commits an offence and shall be liable upon conviction to a fine not exceeding \$50,000 or imprisonment for a period not exceeding 7 years or both.
- (3) Any person who attempts to do any act that is referred to in subsection (2) commits an offence and shall be liable upon conviction to one-half of the prescribed penalty.

## PART VI – REGULATIONS AND TRANSITION

### 64 Regulations

The Minister may, with the consent of the Cabinet, make regulations not inconsistent with this Act and may include but is not limited to the following -

- (a) the fee for registering a notice; or
- (b) the fee for issuing a certified search report.

### 65 Transition

- (1) This section applies to –
  - (a) a transaction concluded prior to the effective date of this Act that would otherwise fall within the scope of this Act, referred to as a “prior transaction”; and
  - (b) the right of a lien holder whose right arose prior to the effective date of this Act, referred to as a “prior lien”.
- (2) The validity, effect and enforcement of a prior transaction or prior lien shall be determined by reference to the law in effect when the prior transaction was concluded or the prior lien arose, except as provided otherwise in this section.
- (3) The provisions of this Act on registration, priority, and enforcement apply to a prior transaction or prior lien only in the case of conflict with a security interest created under this Act.
- (4) A creditor under a prior transaction and the holder of a prior lien may register a notice of its interest at any time. Such a notice is referred to in this section as a “transition notice.”
- (5)
  - (a) A transition notice may be registered in the same manner as provided for a notice of a security interest or notice of the right of a lien holder.
  - (b) The authorization of the debtor is not required.
- (6) If a transition notice is registered –
  - (a) on or before the 180<sup>th</sup> day from the effective date of this Act, the interest created under the prior transaction or prior lien shall have priority over a security interest created under this Act, as provided under Part 2, with priority measured from the date of the commencement of this Act;
  - (b) after the 180<sup>th</sup> day from the effective date of this Act, the interest created under the prior transaction or prior lien shall have priority over a security interest created under this Act, as provided under Part 2, with priority measured from the date of the registration of the notice of the prior transaction or prior lien.

- (7) A security interest perfected under this Act shall have priority over the interest created by a prior transaction or prior lien if no transition notice is filed with respect to the prior transaction or prior lien, except as provided in subsection (6).

Passed by the Legislative Assembly this 2<sup>nd</sup> day of September 2010.