



## REPUBLIC OF VANUATU

# PERSONAL PROPERTY SECURITIES ACT NO. 17 OF 2008

### Arrangement of Sections

#### **PART 1      PRELIMINARY**

- 1      Purpose of this Act
- 2      Interpretation
- 3      Meaning of security interest
- 4      Meaning of possession in certain cases
- 5      Meaning of knowledge
- 6      Registration of notice of security interest not to constitute notice or knowledge
- 7      Payment of Stamp Duty

#### **PART 2      APPLICATION OF ACT**

- 8      Act not applicable to certain situations
- 9      Act not applicable to certain transactions
- 10     Application of Act not affected by secured party having title to collateral
- 11     Rights, duties or obligations to be exercised in good faith

#### **PART 3      CONFLICT OF LAWS**

- 12     Application of Vanuatu Laws
- 13     Continuity of perfection where goods are moved to Vanuatu
- 14     Temporary perfection of security interest in collateral
- 15     Location of debtor for purposes of section 16 to 19
- 16     Validity and perfection of security interests in intangible, goods, chattel paper

- 17 Relocation of debtor
- 18 Absence of registration, record or notice relating to the perfection of security interest
- 19 Validity and perfection of security interest in minerals

**PART 4 PRINCIPLES RELATING TO ENFORCEABILITY OF SECURITY INTERESTS**

- 20 Purpose of this Part
- 21 Effectiveness of security agreement
- 22 Enforceability of security agreements against third parties
- 23 Description of collateral as consumer goods or equipment inadequate
- 24 Description of collateral held as inventory
- 25 Security interests in proceeds
- 26 Attachment of security interests
- 27 Perfection of a security interest
- 28 Continuity of perfection of a security interest

**PART 5 ATTACHMENT AND PERFECTION OF SECURITY INTERESTS IN PARTICULAR KINDS OF PERSONAL PROPERTY**

- 29 Security interests in after-acquired property
- 30 Attachment of security interests in after-acquired property
- 31 Continuation of security interests in proceeds
- 32 Continued perfection of a security interest in proceeds
- 33 Temporary perfection of security interest in proceeds
- 34 Temporary perfection of security interest in negotiable instrument
- 35 Temporary perfection of a security interest in negotiable document of title
- 36 Perfection of a security interest in goods in possession of bailee
- 37 Security interests in crops

**PART 6 TAKING GOODS FREE OF SECURITY INTEREST**

- 38 Taking collateral free of unperfected security interests
- 39 Taking goods free of certain security interests
- 40 Taking goods of certain value free of security interest
- 41 Taking consumer goods or equipment free of a security interest perfected by registration
- 42 Taking goods free of temporarily perfected security interests

**PART 7 PRIORITY BETWEEN SECURITY INTERESTS**

**Division 1 Priority of security interests generally**

- 43 Priority of security interests in same collateral
- 44 Original method of perfection applies to continuously perfected security interest
- 45 Timing of registration, possession or perfection of a security interest in original collateral

- 46 Transfer of security interests does not affect priority
- 47 Voluntary subordination of security interests

**Division 2 Priority of advances**

- 48 Security agreement may provide for future advances
- 49 Priority of security interest applies to all advances

**Division 3 Priority of purchase money security interests**

- 50 Priority of money purchase money security interest in collateral or its proceeds other than inventory or intangibles
- 51 Priority of purchase money security interest in inventory or its proceeds
- 52 Priority of purchase money security interest in intangible or its proceeds
- 53 Priority between purchase money security interests in goods or their proceeds taken by seller, lessor or consignor of the collateral
- 54 Priority between purchase money security interests in same goods or their proceeds not taken by seller, etc

**Division 4 Priority of security interests in accessions**

- 55 Security interests in accessions
- 56 Priority of security interest in goods that attaches before they become accession
- 57 Certain interests in whole have priority over a security interest in goods that has attached before they become accessions
- 58 Certain interests have priority over a security interest in goods that attaches after goods become accession

**Division 5 Priority of security interests in processed or commingled Goods**

- 59 Continuation of security interests in goods that become part of processed or commingled goods
- 60 Original method of perfection applies to security interest in goods that become part of processed or commingled goods
- 61 Limit on value of goods that become part of processed or commingled goods
- 62 Priority where more than one security interest continues in processed or commingled goods
- 63 Priority of purchase money security interest in goods that continues in processed or commingled goods

**Division 6 Priority of security interests in transferred collateral**

- 64 Rights of debtor maybe transferred
- 65 General priority of security interest in transferred collateral over security interests granted by transferee
- 66 Transfer of debtor's interest in collateral with prior consent of secured party
- 67 Transfer of debtor's interest in collateral where secured party has knowledge of certain information
- 68 Transfer of debtor's interest in collateral without secured party's consent
- 69 Prior security interest not subordinated

**PART 8 PRIORITY OF OTHER INTERESTS IN COLLATERAL**

- 70 Lien has priority over perfected security interest relating to same goods
- 71 Holder of money takes money free of perfected security interest
- 72 Priority of creditor who receives payment of debt
- 73 Priority of purchaser of negotiable instrument
- 74 Priority of purchaser of investment security
- 75 Priority of purchaser of chattel paper
- 76 Priority of holder of negotiable document of title
- 77 Lessor or mortgagee of land not affected by subsequent security interest in crops
- 78 Perfected security interest in crops not prejudicially affected by subsequent sale, etc, of land
- 79 Priority of interests on assignment of account receivable or chattel paper
- 80 Execution creditor has priority over unperfected security interest

**PART 9 ENFORCEMENT OF SECURITY INTERESTS**

- 81 Meaning of surplus
- 82 Application of this Part
- 83 Rights and obligations of receiver not limited
- 84 When parties to security agreement may contract out of this Part
- 85 Secured party may apply certain collateral in satisfaction of secured obligation
- 86 Secured party may take possession of and sell collateral
- 87 Duty of secured party selling collateral to obtain best price reasonably obtainable
- 88 Apparent possession of certain collateral permitted in some cases
- 89 Power of sale applies to document of title and related goods
- 90 Methods of sale of collateral
- 91 Notice of sale of collateral
- 92 Extinguishment of subordinate security interests on sale
- 93 Secured party to give statement of account to debtor, etc
- 94 Distribution of surplus
- 95 Surplus may be paid into court
- 96 Debtor's etc right to recover surplus
- 97 Proposal of secured party to retain collateral
- 98 Persons entitled to notice may object to proposal
- 99 Person making objection may be requested by secured party to prove interest
- 100 Positions where persons entitled to notice do not object to retention of collateral by secured party
- 101 Disposal of collateral to purchaser for value and in good faith
- 102 Secured party must not damage goods when removing accession
- 103 Person with interest in other goods entitled to compensation for damage caused by removal of accession
- 104 Person entitled to compensation may refuse permission to remove accession
- 105 Secured party may apply to court for order in respect of removal of accession
- 106 Secured party must give notice of removal of accession
- 107 When person with interest in whole may retain accession
- 108 Court may make order concerning removal of accession
- 109 Entitled persons may redeem collateral

- 110 Debtor may reinstate security agreement
- 111 Limit on reinstatement of security agreement

**PART 10 PERSONAL PROPERTY SECURITIES REGISTER**

- 112 Interpretation
- 113 Appointment of Registrar
- 114 Power of Registrar to delegate
- 115 Personal property securities register
- 116 Contents of register
- 117 Person may register notice of security interest
- 118 Data required to register notice of security interest
- 119 Notice of security interest or change notice not to be registered
- 120 Timing of registration of notice of security interest or change notice
- 121 Verification of statement to be forwarded to person who registered notice of security interest or change notice
- 122 Registration of notice of security interest
- 123 Notice of security interest may relate to one or more security agreements
- 124 Notification to debtor about registration of notice of security interest
- 125 Registration of notice of security interest invalid only if seriously misleading
- 126 Seriously misleading notice of security interest
- 127 Proof that person actually misled not necessary
- 128 Validity of registration when description of part of collateral is omitted
- 129 Duration of registration of notice of security interest
- 130 Renewal of registration
- 131 Registration of change notice in respect of transfer of security interest perfected by registration
- 132 Registration of notice of security interest in respect of transfer of security interest not perfected by registration
- 133 Registration of notice of security interest or change notice relating to transfer of security interest
- 134 Transferee of security interest secured party for purposes of Act
- 135 Registration of change notice in respect of subordinated security interest
- 136 Voluntary amendment to or discharge of registration of notice of security interest
- 137 Discharge of registration relating only to consumer goods
- 138 Demand for registration of change notice
- 139 Matters that may be required by demand
- 140 Application of sections 141 to 143 in cases not involving security trust deeds
- 141 Procedure in case of non-compliance with demand and no court order
- 142 Consequences of non-receipt, and receipt, of court order
- 143 Secured party may obtain court order
- 144 Procedure where non-compliance with demand and security trust deed involved
- 145 No fee for compliance with demand
- 146 Removal of data from register
- 147 Search of register
- 148 Search criteria
- 149 Printed search result receivable as evidence

**PART 11 MISCELLANEOUS**

- 150 Entitlement to damages for breach of obligations
- 151 Secured party to provide certain information relating to security interest
- 152 Time for complying with request
- 153 Exemption from complying with request
- 154 Secured party may recover costs arising from request
- 155 Application to court for compliance with request
- 156 Consequences of not complying with court order
- 157 Obligation to disclose successor in security interest when request made
- 158 Application of sections 159 to 163
- 159 Method of service of notices, etc
- 160 Court may make order concerning service of notice, etc
- 161 Service of notice by mail
- 162 Effecting service of notice by facsimile
- 163 Effecting service of notice by electronic mail
- 164 Regulations

**PART 12 TRANSITIONAL PROVISIONS**

- 165 Interpretation
- 166 Prior security interests continue to be enforceable against third parties during transitional period
- 167 Prior registered security interests deemed to be perfected by registration during transitional period
- 168 Certain other prior security interests deemed to be perfected during transitional period
- 169 Prior security interests perfected during transitional period
- 170 Consequences of not perfecting certain security interests
- 171 Time of registration of certain prior security interests
- 172 Competing priority claims perfected during transitional period
- 173 Priority of prior security interests during transitional period
- 174 Priority of third party interests during transitional period
- 175 Commencement

# REPUBLIC OF VANUATU

**Assent:** 12/06/2008  
**Commencement:** 07/07/2008

## PERSONAL PROPERTY SECURITIES ACT ACT NO. 17 OF 2008

An Act to provide for security interests in personal property and for related matters.

Be it enacted by the President and Parliament as follows-

### PART 1 PRELIMINARY MATTERS

#### 1 Purpose of this Act

The purpose of this Act is:

- (a) to provide for the creation and enforceability of security interests in personal property; and
- (b) to provide for the determination of priority between security interests in the same personal property; and
- (c) to provide for the determination of priority between security interests and other types of interests in the same personal property; and
- (d) to provide for the enforcement of security interests in personal property other than consumer goods; and
- (e) to provide for the establishment of a register of security interests in personal property.

#### 2 Interpretation

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

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

**account receivable** means a monetary obligation that is not evidenced by chattel paper, an investment security, or by a negotiable instrument, whether or not that obligation has been earned by performance;

**advance** means the payment of money, the provision of credit, or the giving of value and

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;

**change notice** has the meaning set out in section 112;

**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;

**commercial consignment** means a consignment where:

- (a) a consignor has reserved an interest in the 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** means any person other than a manufacturer, wholesaler, dealer, or a finance company;

**consumer goods** means goods that are used or acquired for use primarily for personal, domestic, or household purposes;

**country** includes any State, territory, province, or other part of a country;

**crop** means a crop, whether matured or otherwise, and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land and includes trees that are the subject of a forestry right as that term is defined in the Forestry Rights Registration and Timber Harvest Guarantee Act [CAP 265];

**debtor** means

- (a) a person who owes payment or performance of an obligation secured, whether or not that person owns or has other rights in the collateral; or
- (b) a person who receives goods from another person under a commercial consignment; or



- (c) a lessee; or
- (d) a transferor of an account receivable or chattel paper; or
- (e) a transferee of or successor to the interest of a person referred to in paragraphs (a) to (d); or
- (f) if the person referred to in paragraph (a) and the person who owns or has other rights in the collateral are not the same person, includes:
  - (i) the person who owns or has other rights in the collateral, where the term "debtor" is used in a provision of this Act dealing with the collateral; or
  - (ii) the obligor, where the term "debtor" is used in a provision of this Act dealing with the obligation; or
  - (iii) both the person who owns or has other rights in the collateral and the obligor (if the context so requires).

A debtor also 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 the security agreement, gives the secured party the right to enforce the security;

**document** means a document in any form and includes:

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

**document of title** means a writing issued by or addressed to a bailee;

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

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

**future advance:**

- (a) means the payment of money, the provision of credit, or the giving of value secured by a security interest, occurring after the security agreement has been signed, or assented to by letter, telegram, cable, telex message, facsimile, electronic mail, or other similar means of communication, whether or not provided or given under an obligation; and
- (b) includes advances, reasonable costs incurred, and expenditures made for the protection, maintenance, preservation, or repair of the collateral, or for the enforcement of the security interest;

**goods:**

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

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

**inventory** means goods that are:

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

**investment security** means a writing (whether or not in the form of a security certificate):

- (a) that is recognised in the place in which it is issued or dealt with as evidencing a warrant or option or share, right to participate, or other interest in property or an enterprise, or that evidences an obligation of the issuer; and
- (b) that, in the ordinary course of business, is transferred or withdrawn:
  - (i) by delivery with any necessary endorsement, assignment, or registration in the records of the issuer or agent of the issuer, or by compliance with restrictions on transfer or withdrawal; or
  - (ii) by an entry in the records of a clearing house or securities depository; or
  - (iii) by an entry in the records maintained for that purpose by or on behalf of the issuer; or
  - (iv) by an entry in the records maintained for that purpose by or on behalf of the nominee,

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

**knowledge** has the meaning set out in section 5;

**lease:**

- (a) means a lease or bailment of goods for a definite or indefinite term; and
- (b) does not include:
  - (i) a lease by a lessor who is not regularly engaged in the business of leasing goods; or
  - (ii) a lease of household furnishings or appliances as part of a lease of land where the use of the goods is incidental to the use and enjoyment of the land; or
  - (iii) a lease of prescribed goods;

**Minister** means the Minister for the time being responsible for the administration of the Act;

**money** means currency authorised as a medium of exchange by the law of Vanuatu or of any other country;

**negotiable instrument** means:

- (a) a bill of exchange or promissory note within the meaning of the Bills of Exchange Act 1882 (UK); 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 or assignment; or
- (c) a letter of credit, if the letter of credit states on it that it must be presented on claiming payment.

negotiable instrument does not include chattel paper, a document of title, or an investment security;

**new value** means value other than antecedent debt or liability; a consideration relating to a new arrangement;

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

**notice of security interest** has the meaning set out in section 112;

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

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

less any amount paid before the determination;

**organisation** means any body or organisation, whether incorporated or unincorporated;

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

**perfected by possession**, in relation to a security interest, means the security interest has attached and the secured party has taken possession of the collateral (except where possession is a result of seizure or repossession);

**perfected by registration**, in relation to a security interest, means the security interest has attached and a notice of security interest has been registered in respect of the security interest;

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

**personal property** includes chattel paper, documents of title, goods, intangibles, investment securities, money, and negotiable instruments as well as things, rights and undertakings originating from land provided the debtor has ownership right and right to disposition to said personal property;

**prescribed** means prescribed by regulations;

**proceeds**:

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

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

**purchase money security interest**

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

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

**purchaser** means a person who purchases personal property;

**receiver** means a receiver appointed by the Court or under a security agreement and includes receiver and manager;

**register** has the meaning set out in section 112;

**registrar** has the meaning set out in section 112;

**Regulations** means regulations made under this Act;

**secured party:**

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

**security agreement:**

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

- (b) includes a writing that evidences a security agreement (if the context permits);

**security interest** has the meaning set out in section 3;

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

**temporarily perfected security interest** means a security interest that is temporarily perfected in accordance with section 14 or Part 5;

**unperfected security interest** means a security interest that is not a perfected security interest;

**value:**

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

**verification statement** has the meaning set out in section 112;

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

**working day** means a day of the week other than Saturday, Sunday or any public holiday as that expression is defined in the Interpretation Act [CAP 132];

**writing** includes:

- (a) the recording of words in a permanent and legible form; and
  - (b) the recording of words by electronic means that can be retrieved and read; and
  - (c) the display of words by any form of electronic or other means of communication that is subsequently recorded by electronic means that can, by any means, be retrieved and read.
- (2) For the purposes of this Act, fungible goods and fungible securities are goods or securities of which any unit is by nature or usage of trade, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement.

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

### **3 Meaning of security interest**

- (1) For the purposes of this Act **security interest**:

- (a) means an interest in personal property created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to:
- (i) the form of the transaction; and
  - (ii) the identity of the person who has title to the collateral; and
- (b) includes an interest created or provided for by a transfer of an account receivable or chattel paper, a lease, or a commercial consignment (whether or not the transfer, lease, or consignment secures payment or performance of an obligation).
- (2) A person who is obligated under an account receivable may take a security interest in the account receivable under which that person is obligated.
- (3) Without limiting subsection (1), and to avoid doubt, this Act applies to a fixed charge, floating charge, chattel mortgage, conditional sale agreement (including an agreement to sell subject to retention of title), hire purchase agreement, pledge, security trust deed, trust receipt, consignment, lease, an assignment, or an asset arrangement subject to conditions, that secures payment or performance of an obligation.

### **4 Meaning of possession in certain cases**

- (1) For the purposes of this Act, a person takes possession of an investment security if:
- (a) in the case of an investment security that is evidenced by a security certificate, the person takes physical possession of that certificate; or
  - (b) in the case of an investment security that is traded or settled through a clearing house or securities depository, the clearing house or securities depository, as the case may be, records the interest of the person in the investment security; or
  - (c) in the case of an investment security that is not evidenced by a security certificate and that is not traded or settled through a clearing house or



securities depository, the records maintained by the issuer, or on behalf of the issuer, record the interest of the person in the investment security; or

- (d) in the case of an investment security that is held by a nominee, the records of the nominee record the interest of the person in the investment security.
- (2) A person takes possession of a negotiable instrument if:
- (a) the person takes physical possession of the negotiable instrument; or
  - (b) in the case of a negotiable instrument that is traded or settled through a clearing house or securities depository, the clearing house or securities depository, as the case may be, records the interest of the person in the negotiable instrument.
- (3) For the purposes of this Act, a secured party is not in possession of collateral that is in the actual or apparent possession or control of the debtor or the debtor's agent.

## **5 Meaning of knowledge**

- (1) For the purposes of this Act:
- (a) an individual knows or has knowledge of a fact in relation to a particular transaction when that person has actual knowledge of the fact or receives a notice stating the fact; or
  - (b) an organisation knows or has knowledge of a fact in relation to a particular transaction when:
    - (i) the person within the organisation with responsibility for matters to which the transaction relates has actual knowledge of the fact; or
    - (ii) the organisation receives a notice stating the fact; or
    - (iii) the fact is communicated to the organisation in such a way that it would have been brought to the attention of the person with responsibility for matters to which the transaction relates if the organisation had exercised reasonable care.
- (2) For the purposes of subsection (1):
- (a) a person receives a notice when the notice is given to the person in accordance with sections 158 to 163 (service of notices); or
  - (b) an organisation exercises reasonable care if it takes reasonable steps to ensure that significant information is brought to the attention of the person

within the organisation with responsibility for matters to which a particular transaction relates.

- (3) Nothing in paragraph (2)(b) requires a person acting on behalf of the organisation to communicate information unless the communication is part of that person's regular duties or unless the person has reason to know of the transaction and that the transaction would be materially affected by the information.

## **6 Registration of notice of security interest not to constitute notice or knowledge**

Registration of a notice of security interest is not constructive notice or knowledge of its existence or contents to any person.

## **7 Payment of Stamp Duty**

If a document creates a security interest and is chargeable with ad valorem duty as a mortgage under the provisions of the Stamp Duties Act [CAP 68]:

- (a) this Act does not relieve the party liable from its obligation to pay stamp duty; and
- (b) if a secured party is seeking to recover as a principal amount, an amount which exceeds the principal indebtedness in respect of which stamp duty has been paid, the secured party must first ensure that the document is stamped to secure a principal indebtedness which is equal to and exceeds the amount which the secured party is seeking to recover by enforcement of its security interest.

## **PART 2 APPLICATION OF ACT**

### **8 Act not applicable to certain situations**

This Act does not apply to:

- (a) the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of an agent of the seller, unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods; or
- (b) a lien (except as provided in Part 8), charge, or other interest in personal property created by any other Act or by operation of any rule of law; or
- (c) any right of set-off (except as provided in section 79), netting, or combination of accounts; or
- (d) a right of a financial institution to combine accounts of a customer and any security held by that financial institution over deposit with the financial institution as security for advances made by the financial institution to its customer.

### **9 Act not applicable to certain transactions**

This Act does not apply to an interest created or provided for by any of the following transactions:

- (a) the creation or transfer of an interest in land; or
- (b) a transfer of a right to payment that arises in connection with an interest in land, including a transfer of rental payments payable under a lease of or licence to occupy land, unless the right to payment is evidenced by an investment security; or
- (c) a transfer of an unearned right to payment under a contract to a person who is to perform the transferor's obligations under the contract; or
- (d) a transfer of present or future wages, salary, pay, commission, or any other compensation for labour or personal services of an employee; or
- (e) an assignment for the general benefit of creditors of the person making the assignment; or
- (f) a transfer of an interest or claim in or under a contract of annuity or policy of insurance, except as provided by this Act with respect to proceeds and priorities in proceeds; or
- (g) a transfer of a right to damages in tort; or

- (h) an assignment of accounts receivable made solely to facilitate the collection of the accounts receivable on behalf of the person making the assignment; or
- (i) an assignment of a single account receivable or negotiable instrument in whole or in partial satisfaction of a pre-existing indebtedness; or
- (j) a sale of accounts receivable or chattel paper as part of a sale of a business, unless the seller remains in apparent control of the business after the sale; or
- (k) a transfer, assignment, mortgage or assignment of a mortgage of a ship that is registered in accordance with the Maritime Act [CAP 131].

**10 Application of Act not affected by secured party having title to collateral**

The fact that title to collateral may be in the secured party rather than the debtor does not affect the application of any provision of this Act relating to rights, obligations, and remedies.

**11 Rights, duties or obligations to be exercised in good faith**

- (1) All rights, duties, or obligations that arise under a security agreement or this Act must be exercised or discharged in good faith and in accordance with reasonable standards of commercial practice.
- (2) A person does not act in bad faith merely because the person acts with knowledge of the interest of some other person.

## **PART 3      CONFLICT OF LAWS**

### **12      Application of Vanuatu Laws**

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

### **13      Continuity of perfection where goods are moved to Vanuatu**

- (1) A security interest in goods that is perfected under the law of the jurisdiction in which the goods are situated when the security interest attached and before the goods are brought into Vanuatu continues to be perfected in Vanuatu if it is perfected in Vanuatu by the earliest -
- (a) not later than 60 days after the day on which the goods are brought into Vanuatu; or
  - (b) not later than 15 days after the day on which the secured party has knowledge that the goods have been brought into Vanuatu; or
  - (c) before perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached.
- (2) A security interest that is not perfected as provided in subsection (1) may be otherwise perfected in Vanuatu under this Act.

#### **14 Temporary perfection of security interest in collateral**

- (1) A security interest in collateral that is moved to Vanuatu is temporarily perfected by registration until the expiration of 30 working days after the day on which the collateral was moved to Vanuatu, if the security interest was not perfected under the law of the jurisdiction in which the collateral was situated when the security interest attached.
- (2) If a security interest referred to in section 12 is not perfected under the law of the jurisdiction in which the collateral was situated when the security interest attached and before the collateral was brought into Vanuatu, it may be perfected under this Act.

#### **15 Location of debtor for purposes of sections 16 to 19**

For the purposes of sections 16 to 19:

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

#### **16 Validity and perfection of security interests in intangible, goods, chattel paper**

The validity, perfection, and effect of perfection or non-perfection of a security interest is governed by the law, including the conflict of laws rules, of the jurisdiction where the debtor is located when the security interest attaches, if the security interest is:

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

#### **17 Relocation of debtor**

If a debtor relocates to another jurisdiction or transfers an interest in the collateral to a person located in another jurisdiction, a security interest perfected in accordance with the

law applicable, as provided in section 16, continues to be perfected in Vanuatu if it is perfected in the other jurisdiction by the earliest:

- (a) not later than 60 days after the day on which the debtor relocates or transfers an interest in the collateral to a person located in the other jurisdiction; or
- (b) not later than 15 days after the day on which the secured party has knowledge that the debtor has relocated or transferred an interest in the collateral to a person located in the other jurisdiction; or
- (c) prior to the day on which perfection ceases under the law of the first jurisdiction.

**18 Absence of registration, record or notice relating to the perfection of security interest**

(1) If the law governing the perfection of a security interest referred to in section 16 or section 17 does not provide for public registration or recording of the security interest or a notice relating to it, and the collateral is not in the possession of the secured party, the security interest is subordinate to:

- (a) an interest in an account receivable that is payable in Vanuatu; or
  - (b) an interest in goods, an investment security, a negotiable instrument, a negotiable document of title, money, or chattel paper, acquired when the collateral was situated in Vanuatu.
- (2) Subsection (1) does not apply if the security interest is perfected under this Act before the interest referred to in paragraph (a) of that subsection or paragraph (b) of that subsection arises.
- (3) A security interest to which subsection (1) applies may be perfected under this Act.

**19 Validity and perfection of security interest in minerals**

(1) Despite section 16, the validity, perfection, and the effect of perfection or non-perfection of a security interest in minerals, or in an account receivable resulting from the sale of the minerals at the minehead, is governed by the law of the jurisdiction in which the minehead is located if the security interest:

- (a) is provided for in a security agreement signed, or assented to by letter, telegram, cable, telex message, facsimile, electronic mail, or other similar means of communication, before the minerals are extracted; and
- (b) attaches to the minerals on extraction or attaches to an account receivable on the sale of the minerals.

- (2) For the purposes of subsection (1):  
**minehead** includes a wellhead;  
**minerals** include petroleum and gas.



## **PART 4 PRINCIPLES RELATING TO ENFORCEABILITY OF SECURITY INTERESTS**

### **20 Purpose of this Part**

The purpose of this Part is to outline the main principles that are relevant:

- (a) to determining the enforceability of a security interest against the debtor and third parties; and
- (b) to determining the priority between security interests in the same personal property; and
- (c) to determining the priority between a security interest in personal property and other interests in the same property (for example, the interest of a buyer of goods).

### **21 Effectiveness of security agreement**

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

### **22 Enforceability of security agreements against third parties**

- (1) A security agreement is enforceable against a third party in respect of a particular collateral only if:
  - (a) the collateral is in the possession of the secured party; or
  - (b) the debtor has signed, or has assented to by letter, telegram, cable, telex message, facsimile, electronic mail, or other similar means of communication, a security agreement that contains:
    - (i) an adequate description of the collateral by item or kind that enables the collateral to be identified; or
    - (ii) a statement that a security interest is taken in all of the debtor's present and after-acquired property; or
    - (iii) 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.
- (2) To avoid doubt, a security agreement may be enforceable against a third party in respect of particular collateral even though the security agreement is not enforceable against a third party in respect of other collateral to which the security agreement relates.

**23 Description of collateral as consumer goods or equipment inadequate**

A description is inadequate for the purposes of subparagraph 22 (1) (b) (i) if it describes the collateral as consumer goods or equipment without further reference to the item or kind of collateral.

**24 Description of collateral held as inventory**

Despite subparagraph 22 (1) (b) (i), a description of collateral as inventory is adequate only while it is held by the debtor as inventory.

**25 Security interest in proceeds**

Except as otherwise provided in this Act, a security interest in proceeds is enforceable against a third party whether or not the security agreement contains a description of the proceeds.

**26 Attachment of security interests**

(1) A security interest attaches to collateral when:

- (a) value is given by the secured party; and
- (b) the debtor has rights in the collateral; and
- (c) except for the purpose of enforcing rights between the parties to the security agreement, the security agreement is enforceable against third parties within the meaning of section 22.

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

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

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

**27 Perfection of a security interest**

(1) Except as otherwise provided in this Act, a security interest is perfected when:

- (a) the security interest has attached; and
- (b) either:

- (i) a notice of security interest has been registered in respect of the security interest; or
  - (ii) the secured party, or another person on the secured party's behalf, has possession of the collateral (except where possession is a result of seizure or repossession).
- (2) Subsection (1) applies regardless of the order in which attachment and either of the steps referred to in paragraph (b) of that subsection occur.

**28 Continuity of perfection of a security interest**

A security interest is continuously perfected for the purposes of this Act, if:

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

## **PART 5        ATTACHMENT AND PERFECTION OF SECURITY INTERESTS IN PARTICULAR KINDS OF PERSONAL PROPERTY**

### **29        Security interests in after-acquired property**

A security agreement may provide for security interests in after-acquired property.

### **30        Attachment of security interests in after-acquired property**

A security interest in after-acquired property attaches without specific appropriation by the debtor, unless the after-acquired property is a consumer good and:

- (a)    the consumer good is not an accession or does not replace the collateral described in the security agreement; or
- (b)    the security interest in the consumer good is not a purchase money security interest.

### **31        Continuation of security interests in proceeds**

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

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

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

### **32        Continued perfection of a security interest in proceeds**

A security interest in proceeds is a continuously perfected security interest in proceeds if the security interest in the original collateral is perfected by registration of a notice of security interest that:

- (a)    contains a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind; or
- (b)    contains a description of the original collateral, and:
  - (i)    the proceeds are of a kind that are within the description of the original collateral; or
  - (ii)   the proceeds are cash proceeds; or

- (iii) the proceeds consist of a payment made in total or partial discharge or redemption of an intangible, a negotiable instrument, an investment security, or chattel paper; or
- (iv) the proceeds consist of a right to an insurance payment or any other payment as indemnity or compensation for loss or damage to the collateral or proceeds.

**33 Temporary perfection of a security interest in proceeds**

A security interest in proceeds is temporarily perfected until the expiration of 10 working days after the security interest in the original collateral attached to the proceeds, if:

- (a) the security interest in the original collateral is perfected; and
- (b) the security interest in the proceeds is not continuously perfected under section 32.

**34 Temporary perfection of security interest in negotiable instrument**

A security interest in a negotiable instrument or an investment security is temporarily perfected until the expiration of 10 working days after the secured party made the negotiable instrument or investment security available to the debtor, if:

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

**35 Temporary perfection of security interest in negotiable document of title**

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 is temporarily perfected until the expiration of 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.

**36 Perfection of a security interest in goods in possession of bailee**

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

- (a) a notice of security interest relating to the goods is registered; or
- (b) the security interest in the negotiable document of title to the goods is perfected (where the bailee has issued a document of title); or
- (c) the bailee:
  - (i) has issued a document of title in the name of the secured party; or
  - (ii) holds the goods on behalf of the secured party under section 27.

**37 Security interests in crops**

- (1) Except as otherwise provided in this Act, a security interest in crops is a security interest in the crops to be grown, while growing and afterwards when cut or separated from the soil.
- (2) For the purposes of determining whether a security interest in crops cut or separated from the soil exists, it does not matter whether the crops are stored on the land where the crops were grown or on any other land or premises.

## **PART 6 TAKING GOODS FREE OF SECURITY INTEREST**

### **38 Taking collateral free of unperfected security interests**

A buyer or lessee of collateral who acquires the collateral for value takes the collateral free of an unperfected security interest in the collateral, unless the unperfected security interest was created or provided for by a transaction to which the buyer or lessee is a party.

### **39 Taking goods free of certain security interests**

If a buyer purchases goods sold in the ordinary course of business of a seller or a lessor leases goods to a lessee in the ordinary course of business of a lessor, the buyer or the lessee take the goods free of a security interest that is given by the seller or lessor or that arises under section 31, unless the buyer or lessee knows that the sale or the lease constitutes a breach of the security agreement under which the security interest was created.

### **40 Taking goods of certain value free of security interest**

- (1) A buyer or lessee of goods that are acquired as consumer goods, takes the consumer goods free of any security interest, if:
  - (a) the value of the consumer goods does not exceed VT 75,000 at the time the security interest in the goods attached, or, if there is more than one security interest in those goods, at the time the security interest with priority over all other security interests attached; and
  - (b) the buyer or lessee:
    - (i) gave new value for the interest acquired; and
    - (ii) bought or leased the goods without knowledge of the security interest.
- (2) The Minister may, from time to time, alter the amount specified in subsection (1).

### **41 Taking consumer goods or equipment free of a security interest perfected by registration**

A buyer or lessee of goods that are acquired as consumer goods or equipment, as the case may be, takes the consumer goods or equipment free of a security interest perfected by registration, if:

- (a) the buyer bought, or the lessee leased, the consumer goods or the equipment without knowledge of the security interest; and
- (b) the consumer goods are, or the equipment is, of a kind that is required by the regulations to be described by serial number in a notice of security interest; and

- (c) the consumer goods were, or the equipment was, not correctly described by serial number in the notice of security interest relating to the security interest.

**42 Taking goods free of temporarily perfected security interests**

A buyer or lessee of goods takes the goods free of a security interest that is temporarily perfected under section 14 or section 33 or section 35 if:

- (a) the buyer or lessee gave new value for the interest acquired; and
- (b) the buyer bought, or the lessee leased, the goods without knowledge of the security interest.



## **PART 7 PRIORITY BETWEEN SECURITY INTERESTS**

### **Division 1 Priority of security interests generally**

#### **43 Priority of security interests in same collateral**

If this Act provides no other way of determining priority between security interests in the same collateral:

- (a) a perfected security interest has priority over an unperfected security interest in the same collateral; or
- (b) priority between perfected security interests in the same collateral (where perfection has been continuous) is to be determined by the order of whichever of the following first occurs in relation to a particular security interest:
  - (i) the registration of a notice of security interest;
  - (ii) the secured party, or another person on the secured party's behalf, taking possession of the collateral (except where possession is a result of seizure or repossession);
  - (iii) the temporary perfection of the security interest in accordance with this Act; or
- (c) priority between unperfected security interests in the same collateral is to be determined by the order of attachment of the security interests.

#### **44 Original method of perfection applies to continuously perfected security interest**

For the purposes of section 43, a continuously perfected security interest is to be treated at all times as perfected by the method by which it was originally perfected.

#### **45 Timing of registration, possession or perfection of a security interest in original collateral**

For the purposes of section 43, the time of registration, possession, or perfection of a security interest in original collateral is also the time of registration, possession, or perfection of its proceeds.

#### **46 Transfer of security interests does not affect priority**

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

**47 Voluntary subordination of security interests**

- (1) A secured party may, in a security agreement or otherwise, subordinate the secured party's security interest to any other interest.
- (2) An agreement to subordinate a security interest is effective according to its terms between the parties and may be enforced by a third party if the third party is the person, or one of a class of persons, for whose benefit the agreement is intended.
- (3) A security interest is not created only by an agreement or undertaking to postpone or subordinate the following:
  - (a) the right of a person to performance of all or any part of an obligation to the right of another person to the performance of all or any part of another obligation of the same debtor; or
  - (b) all or any part of the rights of a secured party under a security agreement to all or any part of the rights of another secured party under another security agreement with the same debtor.

**Division 2 Priority of advances**

**48 Security agreement may provide for future advances**

- (1) A security agreement may provide for future advances.
- (2) Section 49 does not apply to future advances that are not provided for in the security agreement at the time when the security agreement is made.

**49 Priority of security interest applies to all advances**

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

**Division 3 Priority of purchase money security interests**

**50 Priority of purchase money security interest in collateral or its proceeds, other than inventory or intangibles**

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

- (a) the debtor, or
- (b) another person at the request of the debtor,

obtained possession of the collateral, whichever is earlier.

**51 Priority of purchase money security interest in inventory or its proceeds**

A purchase money security interest in inventory or its proceeds has priority over a non-purchase money security interest in the same collateral given by the same debtor if 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, whichever is earlier.

**52 Priority of purchase money security interest in intangible or its proceeds**

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

**53 Priority between purchase money security interests in goods or their proceeds taken by seller, lessor or consignor of the collateral**

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

- (a) in the case of inventory, at the time the debtor, or another person at the request of the debtor, obtained possession of the collateral, whichever is earlier; or
- (b) in the case of collateral, other than inventory, not later than 10 working days after the day on which the debtor, or another person at the request of the debtor, obtained possession of the collateral, whichever is earlier.

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

Priority between purchase money security interests in the same goods or their proceeds that have not been taken by a seller, lessor, or consignor, and that have been given by the same debtor is to be determined in accordance with section 43.

**Division 4 Priority of security interests in accessions**

**55 Security interests in accessions**

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

**56 Priority of security interest in goods that attaches before they become accession**

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

**57 Certain interests in whole have priority over a security interest in goods that has attached before they become accessions**

The interest of any of the following persons has priority over a security interest in goods that is attached at the time when the goods become an accession:

- (a) a person who acquires for value an interest in the whole after the goods become an accession, but before the security interest in the accession is perfected; or
- (b) an assignee for value of a person with an interest in the whole at the time when the goods become an accession, but before the security interest in the accession is perfected; or
- (c) a person with a perfected security interest in the whole who makes an advance under the security agreement relating to the security interest after the goods become an accession, but before the security interest in the accession is perfected, and only to the extent of the advance; or
- (d) a person with a perfected security interest in the whole who acquires the right to retain the whole in satisfaction of the obligation secured after the goods become an accession, but before the security interest in the accession is perfected.

**58 Certain interests have priority over a security interest in goods that attaches after goods become accession**

A security interest in goods that attaches after the goods become an accession is subordinate to the interest of:

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

## **Division 5 Priority of security interests in processed or commingled goods**

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

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

### **60 Original method of perfection applies to security interest in goods that become part of processed or commingled goods**

For the purposes of section 43, perfection of a security interest in goods that subsequently become part of a product or mass is to be treated as perfection of the security interest in the product or the mass.

### **61 Limit on value of goods that become part of processed or commingled goods**

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

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

- (1) A perfected security interest continuing in the product or mass has priority over an unperfected security interest continuing in the same product or mass.
- (2) If more than one perfected security interest continues in the same product or mass, each perfected security interest is entitled to share in the product or mass according to the ratio that the obligation secured by the perfected security interest bears to the sum of the obligations secured by all perfected security interests in the same product or mass.
- (3) If more than 1 unperfected security interest continues in the same product or mass, each unperfected security interest is entitled to share in the product or mass according to the ratio that the obligation secured by the unperfected security interest bears to the sum of the obligations secured by all unperfected security interests in the same product or mass.
- (4) For the purposes of this section, the obligation secured by a security interest does not exceed the value of the goods on the day on which the goods became part of the product or mass.

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

Despite section 62, a perfected purchase money security interest in goods that continues in the product or mass has priority over:

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

## **Division 6 Priority of security interests in transferred collateral**

### **64 Rights of debtor may be transferred**

- (1) The rights of a debtor in collateral may be transferred consensually or by operation of law despite a provision in the security agreement prohibiting transfer or declaring a transfer to be a default.
- (2) A transfer by the debtor does not prejudice the rights of the secured party under the agreement or otherwise, including the right to treat a prohibited transfer as an act of default.
- (3) In this section, **transfer** includes a sale, the creation of a security interest, or a transfer under judgment enforcement proceedings.

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

- (1) If a debtor transfers an interest in collateral that, at the time of the transfer, is subject to a perfected security interest, that security interest has priority over any other security interest granted by the transferee, except to the extent that the security interest granted by the transferee secures advances made or contracted for:
  - (a) after the expiration of 15 days from the date that the secured party who holds the security interest in the transferred collateral had knowledge of the information required to register a change notice disclosing the transferee as the new debtor; and
  - (b) before the secured party referred to in paragraph (a) took possession of the collateral or registered a change notice disclosing the transferee as the new debtor.
- (2) Subsection (1) does not apply if the transferee acquires the debtor's interest free of the security interest granted by the debtor.

### **66 Transfer of debtor's interest in collateral with prior consent of secured party**

Despite section 65, if a security interest is perfected by registration and the debtor transfers all or part of the debtor's interest in the collateral with the prior consent of the secured party, the security interest in the transferred collateral is subordinate to:

- (a) an interest, other than a security interest in the transferred collateral, arising during the period commencing on the expiration of the fifteenth day after the transfer to the time the secured party amended the registration to disclose the name of the transferee of the interest in the collateral as the new debtor or took possession of the collateral; and
- (b) a perfected security interest in the transferred collateral that is registered or perfected during the period referred to in paragraph (a); and
- (c) a perfected security interest in the transferred collateral that is registered or perfected after the transfer and before the expiration of the fifteenth day after the transfer if, before the expiration of the 15 days:
  - (i) the registration of the security interest first referred to in this section is not amended to disclose the transferee of the interest in the collateral as the new debtor; or
  - (ii) the secured party does not take possession of the collateral.

**67 Transfer of debtor's interest in collateral where secured party has knowledge of certain information**

- (1) Despite section 65, subsection (2) applies where a security interest is perfected by registration and the secured party has knowledge of:
  - (a) information required to register a change notice disclosing the transferee as the new debtor, where all or part of the debtor's interest in the collateral is transferred; or
  - (b) the new name of the debtor, if there has been a change in the debtor's name.
- (2) The security interest, in the transferred collateral where paragraph (1) (a) applies, and in the collateral where paragraph (1) (b) applies, is subordinate to:
  - (a) an interest, other than a security interest, in that collateral, arising during the period commencing on the expiration of the fifteenth day after the secured party has knowledge of the information referred to in paragraph (1) (a) or the new name of the debtor to the time the secured party amends the registration to disclose the name of the transferee as the debtor, or to disclose the new name of the debtor, or takes possession of the collateral; and
  - (b) a perfected security interest in the collateral that is registered or perfected in the period referred to in paragraph (2)(a); and

(c) a perfected security interest in the collateral that is registered or perfected after the secured party had knowledge of the information referred to in paragraph (1) (a) or the new name of the debtor and before the expiration of the fifteenth day referred to in paragraph (2)(a), if, before the expiration of the 15 days:

(i) the registration of the security interest first referred to in this subsection is not amended to disclose the transferee of the collateral as the new debtor or to disclose the new name of the debtor; or

(ii) the secured party does not take possession of the collateral.

**68 Transfer of debtor's interest in collateral without secured party's consent**

(1) If the debtor's interest in part or all of the collateral is transferred by the debtor without the consent of the secured party and there are one or more subsequent transfers of the collateral without the consent of the secured party before the secured party acquires knowledge of the name of the most recent transferee of the collateral, the secured party is deemed to have complied with section 67 if the secured party registers a notice of security interest not later than 15 days after acquiring knowledge of:

(a) the name of the most recent transferee of the collateral; and

(b) the information required to register a change notice.

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

**69 Prior security interest not subordinated**

Sections 66 to 68 do not have the effect of subordinating a prior security interest deemed by section 171 or section 172 to be perfected by registration under this Act.



## **PART 8      PRIORITY OF OTHER INTERESTS IN COLLATERAL**

### **70      Lien has priority over perfected security interest relating to same goods**

A lien arising out of materials or services provided in respect of goods that are subject to a security interest in the same goods has priority over that security interest if:

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

### **71      Holder of money takes money free of perfected security interest**

A holder of money takes the money free of a perfected security interest if the holder:

- (a) acquired the money without knowledge of the security interest; or
- (b) is a holder for value, whether or not the holder knew of the security interest at the time the holder acquired the money.

### **72      Priority of creditor who receives payment of debt**

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

- (a) the funds paid; or
  - (b) the intangible that was the source of the payment; or
  - (c) a negotiable instrument used to effect the payment.
- (2) Subsection (1) applies whether or not the creditor had knowledge of the security interest at the time of the payment.
- (3) In subsection (1), **debtor-initiated payment** means a payment made by the debtor through the use of:
- (a) a negotiable instrument; or
  - (b) an electronic funds transfer; or

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

**73 Priority of purchaser of negotiable instrument**

(1) The interest of a purchaser of a negotiable instrument has priority over a perfected security interest in the negotiable instrument if the purchaser:

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

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

**74 Priority of purchaser of investment security**

(1) The interest of a purchaser of an investment security has priority over a perfected security interest in the investment security if the purchaser:

- (a) gave value for the investment security; and
- (b) acquired the investment security without knowledge of the security interest; and
- (c) took possession of the investment security.

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

**75 Priority of purchaser of chattel paper**

The interest of a purchaser of chattel paper who takes possession of the chattel paper in the ordinary course of the purchaser's business and for new value has priority over a security interest in the chattel paper:

- (a) that was perfected, if the purchaser took possession of the chattel paper without knowledge of the security interest; or

- (b) that has attached to proceeds of inventory, whether or not the purchaser took possession of the chattel paper without knowledge of the security interest.

**76 Priority of holder of negotiable document of title**

- (1) The interest of a holder of a negotiable document of title has priority over a perfected security interest in the document of title if the holder:
  - (a) gave value for the document of title; and
  - (b) acquired the document of title without knowledge of the security interest.
- (2) For the purposes of subsection (1), the holder of a negotiable document of title who acquired it under a transaction entered into in the ordinary course of the transferor's business has knowledge only if the holder acquired the negotiable instrument with knowledge that the transaction is a breach of the security agreement to which the security interest relates.

**77 Lessor or mortgagee of land not affected by subsequent security interest in crops**

A security interest in crops does not prejudicially affect the rights of a lessor or mortgagee of land on which the crops are growing if:

- (a) those rights existed at the time the security interest was created; and
- (b) the lessor or mortgagee has not consented in writing to the creation of the security interest.

**78 Perfected security interest in crops not prejudicially affected by subsequent sale, etc, of land**

A perfected security interest in crops is not extinguished or prejudicially affected by a subsequent sale, lease, mortgage, or other encumbrance of or upon the land on which the crops are growing.

**79 Priority of interests on assignment of account receivable or chattel paper**

- (1) The rights of an assignee of an account receivable or chattel paper are 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 that accrues before the account debtor acquires knowledge of the assignment.
- (2) Subsection (1) does not apply if the account debtor on an account receivable or chattel paper has made an enforceable agreement not to assert defences to claims arising out of the contract.

(3) In this section:

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

**assignee** includes a secured party and a receiver.

**80 Execution creditor has priority over unperfected security interest**

- (1) The interest of an execution creditor who has seized collateral has priority over any security interest in the same collateral, if the security interest is not perfected at the time of execution.
- (2) To avoid doubt, an execution creditor does not include a landlord who exercises a right of distress.

## **PART 9 ENFORCEMENT OF SECURITY INTERESTS**

### **81 Meaning of surplus**

- (1) For the purposes of this Part, there is a surplus if:
- (a) a secured party has applied the collateral under section 85, and the value of the money, account receivable, negotiable instrument, or investment security exceeds:
    - (i) the amount of the debt owed to the secured party by the debtor (where the collateral secures payment); or
    - (ii) the monetary value of the obligation owed to the secured party (where the collateral secures performance of an obligation);
  - (b) a secured party has sold the collateral under section 100, and the net proceeds of the sale exceed:
    - (i) the amount of the debt owed to the secured party by the debtor (where the collateral secures payment); or
    - (ii) the monetary value of the obligation owed to the secured party (where the collateral secures performance of an obligation).
- (2) In paragraph (1) (b), net proceeds, in relation to a sale of collateral, 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.

### **82 Application of this Part**

This Part applies only to security interests that are not created or provided for by:

- (a) a transfer of an account receivable or chattel paper; or
- (b) a 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.

### **83 Rights and obligations of receiver not limited**

This Part does not limit the rights, powers, and obligations of a receiver.

**84 When parties to security agreement may contract out of this Part**

- (1) Despite a term to the contrary in a security agreement, the provisions in this Part have effect to the extent that they relate to the rights of third parties.
- (2) The parties to a security agreement may make their own terms in respect of provisions in this Part to the extent that those provisions do not relate to the rights of third parties.
- (3) If the parties to a security agreement make their own terms in accordance with subsection (2), the relevant provision in this Part has, in relation to that matter, effect subject to that express term.

**85 Secured party may apply certain collateral in satisfaction of secured obligation**

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

**86 Secured party may take possession of and sell collateral**

- (1) A secured party may take possession of and sell collateral when:
  - (a) the debtor is in default under the security agreement; or
  - (b) the collateral is at risk.
- (2) In subsection (1), collateral is "at risk" if the secured party has 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.
- (3) In order to take possession of collateral, the secured party shall be entitled to enter upon premises to remove the subject goods in a manner that does not cause any greater damage to the occupant's property or put the person in possession of the goods to any greater inconvenience than is necessarily incidental to the removal of the goods.

**87 Duty of secured party selling collateral to obtain best price reasonably obtainable**

A secured party who exercises a power of sale of collateral under section 86 owes a duty to obtain the best price reasonably obtainable as at the time of sale to the following persons:

- (a) the debtor; and

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

**88 Apparent possession of certain collateral permitted in some cases**

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

**89 Power of sale applies to document of title and related goods**

If the collateral is a document of title, the power of sale provided by section 86 applies to the document of title and to the goods to which it relates.

**90 Methods of sale of collateral**

A secured party may effect a sale of collateral under section 86 by auction, public tender, private sale, or another method.

**91 Notice of sale of collateral**

- (1) A secured party who intends to sell collateral under section 86 must, not less than 10 working days before selling the collateral, give notice to the following persons:
  - (a) the debtor; or
  - (b) any person who has registered a notice of security interest in respect of the collateral that is effective at the time the secured party took possession of the collateral; or
  - (c) any other person that has given the secured party notice that that person claims an interest in the collateral.
- (2) Subsection (1) does not apply if:
  - (a) the collateral may perish within 10 working days of the secured party taking possession; or
  - (b) the secured party believes on reasonable grounds that the collateral will decline substantially in value if it is not disposed of immediately after default; or

- (c) the cost of care and storage of the collateral is disproportionately large in relation to its value; or
- (d) the collateral is foreign currency; or
- (e) for any other reason, a court on an *ex parte* application is satisfied that a notice is not required.

**92 Extinguishment of subordinate security interests on sale**

If collateral has been sold under section 86, all security interests in the collateral and its proceeds that are subordinate to the security interest of the secured party who sold the collateral are null and void on the sale of the collateral.

**93 Secured party to give statement of account to debtor, etc**

If collateral is sold by a secured party under section 86, the secured party must, within 15 working days after the sale of the collateral, give the persons referred to in subsection 91(1) a statement of account in writing, showing:

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

**94 Distribution of surplus**

(1) If a secured party has applied collateral under section 85 or sold collateral under section 86, as the case may be, the secured party must pay the following persons the amount of any surplus in satisfaction of the claims of those persons in the following order:

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



- (c) the debtor.
- (2) The security interests to which subsection (1) (a) applies must be paid in the order of their priority as determined by Part 7 or by Part 8.
- (3) Subsection (1) applies despite the extinguishment of a security interest under section 92.

**95 Surplus may be paid into court**

- (1) The secured party may pay the surplus into court if there is a question as to who is entitled to receive payment under section 94.
- (2) The surplus may only be paid out on an application by a person claiming an entitlement to the surplus.

**96 Debtor's, etc, right to recover surplus**

The persons referred to in section 94 are entitled to recover the amount of any surplus from the secured party.

**97 Proposal of secured party to retain collateral**

- (1) A secured party with priority over all other secured parties may, after default under the security agreement concerned, propose to take the collateral in satisfaction of the obligation secured by it.
- (2) The secured party must give notice of the proposal to the persons listed in subsection 91(1).

**98 Persons entitled to notice may object to proposal**

The secured party must sell the collateral under section 86 if a person who is entitled to a notice under section 91 and whose interest in the collateral would be adversely affected by the secured party's proposal gives to the secured party a notice of objection within 10 working days after receiving the notice referred to in section 97.

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

- (1) The secured party may request a person, other than the debtor, who objects to provide proof of that person's interest.
- (2) If the person to whom subsection (1) applies does not provide proof not later than 10 working days after the secured party's request, the secured party may proceed as if no objection were received from the person.

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

- (1) If no notice of objection is given, the secured party is, at the expiration of the 10-day period referred to in section 98, deemed to have irrevocably elected to take

the collateral in satisfaction of the obligation secured by it, and is entitled to hold or dispose of the collateral free from all rights and interests of the debtor and of any person entitled to receive notice under subsection 91 (1).

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

**101 Disposal of collateral to purchaser for value and in good faith**

(1) A purchaser who acquires for value and in good faith collateral sold by a secured party takes the collateral free from the following interests:

- (a) the interest of the debtor; or
- (b) any interest subordinate to that of the debtor; or
- (c) any interest subordinate to that of the secured party.

(2) Subsection (1) applies whether or not:

- (a) the secured party has complied with sections 97 to 100; and
- (b) registrations relating to security interests that are subordinate to the security interest of the secured party selling the collateral have been removed from the register.

**102 Secured party must not damage goods when removing accession**

(1) A secured party who is entitled to take possession of an accession under section 86 must 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 necessarily incidental to the removal of the accession.

(2) Subsection 86 (3) applies in relation to subsection (1).

**103 Person with interest in other goods entitled to compensation for damage caused by removal of accession**

(1) A person, other than the debtor, who has an interest in the other goods at the time the goods become an accession is entitled to compensation for any damage to that person's interest in the other goods caused by the removal of the accession.

(2) Any compensation payable under subsection (1) does not include compensation for a reduction in the value of the property caused by the absence of the accession or by the necessity of the replacement of the accession.

**104 Person entitled to compensation may refuse permission to remove accession**

A person entitled to compensation under section 103 may refuse permission to remove the accession until the secured party has given adequate security for the compensation.

**105 Secured party may apply to court for order in respect of removal of accession**

The Court may, on an application made by a secured party, make an order:

- (a) determining who is entitled to compensation under section 103; and
- (b) determining the amount and kind of security to be provided by the secured party under section 104; and
- (c) prescribing the depository for the security under section 104; and
- (d) dispensing with the need for the permission of any or all persons entitled to compensation under section 103.

**106 Secured party must give notice of removal of accession**

(1) The secured party who is entitled to remove the accession from the whole must give notice of the secured party's intention to remove the accession to each of the following persons:

- (a) a person who is known by the secured party to have an interest in the other goods or in the whole;
  - (b) a person who has registered a notice of security interest in the name of the debtor and referring to the other goods;
  - (c) a person who has registered a notice of security interest containing the serial number of the other goods as required or authorised by regulations.
- (2) The notice referred to in subsection (1) must be given not less than 10 working days before the removal of the accession and must contain:
- (a) the name and address of the secured party; and
  - (b) a description of the goods to be removed; and
  - (c) a description of the other goods; and
  - (d) the amount due to the secured party and the value of the accession if the accession were removed from the other goods; and
  - (e) a statement of intention to remove the accession, unless the lesser of the amount secured or the value of the accession is paid on or before a

specified date that is not less than 10 working days after the notice is given.

- (3) This section does not apply if:
- (a) the secured party believes on reasonable grounds that the collateral will decline substantially in value if it is not disposed of immediately after default; or
  - (b) the cost of care and storage of the collateral is disproportionately large in relation to its value; or
  - (c) for any other reason, a court on an *ex parte* application is satisfied that a notice is not required.

**107 When person with interest in whole may retain accession**

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

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

**108 Court may make order concerning removal of accession**

The Court may, on the application of a person entitled to receive a notice under section 106, make an order:

- (a) postponing the removal of the accession; and
- (b) determining the amount payable to the secured party under section 107 for the retention of the accession.

**109 Entitled persons may redeem collateral**

(1) At any time before the secured party has sold or contracted to sell 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 91 may, unless that person otherwise agrees in writing after default, redeem the collateral by:

- (a) tendering fulfillment of the obligation secured by the collateral; and
- (b) paying a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing, and preparing the collateral for sale, if those expenses have actually been incurred by the secured party, and any

other reasonable expenses incurred by the secured party in enforcing the security agreement.

- (2) The debtor's right to redeem the collateral has priority over any other person's right to redeem the collateral.

**110 Debtor may reinstate security agreement**

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; and
- (b) remedying any other default by reason of which the secured party intends to sell the collateral; and
- (c) paying a sum equal to the reasonable expenses of seizing, repossessing, holding, repairing, processing, and preparing the collateral for sale, if those expenses have actually been incurred by the secured party, and any other reasonable expenses incurred by the secured party in enforcing the security agreement.

**111 Limit on reinstatement of security agreement**

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

- (a) more than twice, if the security agreement provides for payment in full by the debtor not later than 12 months after the day on which value was given by the secured party; or
- (b) more than twice in each year, if the security agreement provides for payment by the debtor during a period greater than 1 year after the day on which value was given by the secured party.

## **PART 10 PERSONAL PROPERTY SECURITIES REGISTER**

### **112 Interpretation**

In this Part, unless the context otherwise requires:

**debtor** in addition to its definition in section 2, includes the person named as the debtor in the notice of security interest or change notice, as the case may be;

**change notice** means the data required or authorised by this Act or the regulations to be entered in the register to renew, discharge, or otherwise amend a notice of security interest;

#### **notice of security interest:**

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

**register** means the register of personal property securities established under section 115;

**registrar** means the Registrar of Personal Property Securities appointed in accordance with section 113;

**secured party** includes the person named as the secured party in the notice of security interest or change notice, as the case may be;

**verification statement** means the data that is required or authorised by this Act or the regulations to confirm the registration of a notice of security interest or change notice.

### **113 Appointment of Registrar**

- (1) There must be a Registrar of Personal Property Securities.
- (2) The Registrar of Personal Property Register shall be the Commissioner of the Vanuatu Financial Services Commission.

### **114 Power of Registrar to delegate**

- (1) The Registrar may from time to time, in writing, delegate to any person all or any of the functions, duties, and powers exercisable by the Registrar under this Act, except this power of delegation.
- (2) Every person purporting to act under any delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

- (3) Any delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or specified classes of offices.
- (4) Every delegation under this section is revocable in writing at will. A delegation under this section shall not prevent the exercise of any function, duty, or power by the Registrar.
- (5) Every delegation under this section, until revoked, continues in force according to its tenor, even if the Registrar by whom it was made has ceased to hold office.

**115 Personal property securities register**

- (1) The Registrar must ensure that a register of personal property security interests known as the personal property securities register is kept.
- (2) The register is to be:
  - (a) an electronic register; and
  - (b) maintained for the purposes of registrations under this Act; and
  - (c) operated at all times except as otherwise provided in the regulations.
- (3) The Registrar is to make arrangements for assistance to be provided to a person who intends to register a notice of security interest or a change notice, upon that person's request, by entering the data of the said statements into the electronic register.

**116 Contents of register**

The register contains the following data:

- (a) the name and address of the debtor; and
- (b) the name and address of the secured party; and
- (c) a description of the collateral, including its serial number if required by this Act or by the regulations; and
- (d) expiry date of the security interest; and
- (e) where a security interest was registered prior to the commencement of this Act under another law (as set out in section 165), the date of such prior registration.

**117 Person may register notice of security interest**

A person may register a notice of security interest in accordance with this Act and the regulations.

**118 Data required to register notice of security interest**

The following data must be contained in the notice of security interest in order to register it:

- (a) the name and address of the debtor; and
- (b) the name and address of the secured party; and
- (c) a description of the collateral, including its serial number if required by this Act or by the regulations; and
- (d) expiration of the security interest; and
- (e) the date of prior registration, if prior registration law (as defined in section 165) applies in respect of the security interest.

**119 Notice of security interest or change notice not to be registered**

A notice of security interest or change notice must not be registered if:

- (a) it is not submitted in the prescribed manner or in a form that enables the data to be entered directly by electronic means; and
- (b) the prescribed fee has not been paid to the Registrar, unless arrangements for its payment have been made in accordance with the regulations.

**120 Timing of registration of notice of security interest or change notice**

A notice of security interest or change notice is registered at the time that a registration number, date, and time are assigned to it in the register.

**121 Verification statement to be forwarded to person who registered notice of security interest or change notice**

A verification statement must, as soon as reasonably practicable after a notice of security interest or change notice has been registered, be given to the person who registered the notice of security interest or change notice.

**122 Registration of a notice of security interest**

A notice of security interest may be registered before or after:

- (a) a security agreement is made; or
- (b) a security interest has attached.

**123 Notice of security interest may relate to one or more security agreements**

A notice of security interest may relate to one or more security agreements.



**124 Notification to debtor about registration of notice of security interest**

The secured party who registered a notice of security interest or change notice must, not later than 15 working days after the day on which the verification statement was received, give to the debtor a copy of the verification statement in accordance with the regulations, unless that person has waived in writing the right to receive it.

**125 Registration of notice of security interest invalid only if seriously misleading**

The validity of the registration of a notice of security interest is not affected by any defect, irregularity, omission, or error in the notice of security interest unless the defect, irregularity, omission, or error is seriously misleading.

**126 Seriously misleading notice of security interest**

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

- (a) the name of any of the debtors required by section 118 to be included in the notice of security interest other than a debtor who does not own or have rights in the collateral; or
- (b) the serial number of the collateral if the collateral is consumer goods, or equipment, of a kind that is required by the regulations to be described by serial number in a notice of security interest.

**127 Proof that person actually misled not necessary**

In order to establish that a defect, irregularity, omission, or error is seriously misleading, it is not necessary to prove that any person was actually misled by it.

**128 Validity of registration when description of part of collateral is omitted**

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

**129 Duration of registration of notice of security interest**

- (1) Except as otherwise provided in this Act or in the regulations, a registration of a notice of security interest under this Act is effective until the expiry date specified in the notice of security interest.
- (2) Subsection (1) does not apply if the registration of the notice of security interest is discharged or removed before the expiration of the relevant period referred to in that subsection.

**130 Renewal of registration**

- (1) A registration may be renewed by registering a change notice at any time during the period that the registration is effective.

- (2) Except as otherwise provided in this Act or in the regulations, the period of time for which a registration of a notice of security interest is effective is extended until the expiration of the new term specified in the change notice.
- (3) Subsection (2) does not apply if the registration of the notice of security interest is discharged or removed before the expiration of the relevant period referred to in that subsection.

**131 Registration of change notice in respect of transfer of security interest perfected by registration**

- (1) A change notice may be registered if all or part of a security interest that is perfected by registration has been transferred.
- (2) If a change notice is registered under subsection (1) and a security interest in part, but not all, of the collateral is transferred, the change notice must include a description of the collateral in which the security interest is transferred.

**132 Registration of notice of security interest in respect of transfer of security interest not perfected by registration**

If a secured party with a security interest that is not perfected by registration transfers the security interest, a notice of security interest may be registered in which the transferee is disclosed as the secured party.

**133 Registration of notice of security interest or change notice relating to transfer of security interest**

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

**134 Transferee of security interest secured party for purposes of Act**

For the purposes of this Act, the transferee of a security interest is the secured party after the registration of a change notice disclosing the transfer of the security interest.

**135 Registration of change notice in respect of subordinated security interest**

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

**136 Voluntary amendment to or discharge of registration of notice of security interest-**

- (1) An amendment to a registration or a discharge of a registration may be effected by the secured party registering a change notice at any time during the period that the registration is effective, even if an amendment or discharge of the registration is not specifically provided for in this Part.
- (2) The amendment is effective from the time that the change notice is registered to the expiry of the registration being amended.

**137 Discharge of registration relating only to consumer goods**

If a registration relates exclusively to a security interest in consumer goods, the secured party must 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 that period.

**138 Demand for registration of change notice**

The debtor or any person with an interest in property that falls within the collateral description included in a registered notice of security interest may give a written demand to the secured party for a change notice if:

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

**139 Matters that may be required by demand**

A demand under section 138 may require the secured party to register, within 15 working days after the demand is given, a change notice:

- (a) discharging the registration in a case within paragraph 138(a), (d) or (e); or
- (b) amending or discharging the registration so as to reflect the terms of the agreement in a case within paragraph 138 (b); or
- (c) amending the collateral description to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor in a case within paragraph 138 (c).

**140 Application of sections 141 to 143 in cases not involving security trust deeds**

Sections 141 to 143 do not apply to the registration of a security interest provided for in a security trust deed if the registration discloses that the security agreement providing for the security interest is a security trust deed.

**141 Procedure in case of non-compliance with demand and no court order**

- (1) The person giving the demand under section 138 may enter in the register the change notice referred to in section 139 if the secured party:
- (a) fails to comply with the demand within 15 working days after it is given; or
  - (b) fails, within 15 working days after the demand is given, to give to that person a court order maintaining the registration.
- (2) The Registrar must ensure that the secured party is given a notice stating that the change notice will be registered unless a court order maintaining the registration is served on the Registrar within 15 working days of the notice being 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 change notice is entered in the register.

**142 Consequences of non-receipt and receipt of court order**

- (1) If a court order maintaining the registration is served on the Registrar within 15 working days of the notice referred to in subsection 141 (2) being given to the secured party, the change notice will not be registered and may be removed from the register by the Registrar.
- (2) The change notice will be registered in accordance with section 120, if a court order maintaining the registration is not given to the Registrar within 15 working days of the notice referred to in subsection 141 (2) being given to the secured party.

**143 Secured party may obtain court order**

- (1) At any time before the change notice referred to in section 139 is registered, the Court may, on application by the secured party, and if the Court is satisfied that 1 or more of the grounds for making a demand under section 138 exist, order that the registration:
- (a) be maintained on any condition, and subject to sections 129 and 130, for any period of time; or
  - (b) be discharged or amended.
- (2) The Court may make any other orders it thinks proper for the purpose of giving effect to an order under subsection (1).

- (3) The Registrar must amend or discharge a registration of a notice of security interest in accordance with a court order made under subsection (1) as soon as reasonably practicable after receiving the order.

**144 Procedure where non-compliance with demand and security trust deed involved**

- (1) The Court may, on application by the person making the demand under section 138, and if the Court is satisfied that one or more of the grounds for making a demand under that section exist, make an order directing that the registration be amended or discharged if:
  - (a) the registration of a security interest discloses that the security agreement providing for the security interest is a security trust deed; and
  - (b) the secured party fails to comply with the demand within 15 working days after it is given.
- (2) The Court may make any other orders it thinks proper for the purpose of giving effect to an order under subsection (1).
- (3) The Registrar must amend or discharge a registration of a notice of security interest in accordance with a court order made under subsection (1) as soon as reasonably practicable after receiving the order.

**145 No fee for compliance with demand**

A secured party may not charge any fees for compliance with a demand given under section 138, unless the parties otherwise agree.

**146 Removal of data from register**

Data in a registration may be removed from the register:

- (a) when the registration is no longer effective; or
- (b) on the registration of a change notice discharging or partially discharging the registration.

**147 Search of register**

- (1) A person may search the register, and obtain a printed search result, in accordance with this Act and the regulations
- (2) Any support arrangement as stated in subsection 115(3) includes the obtaining of printed results upon request from the person searching the register.

**148 Search criteria**

The register may be searched only by reference to the following criteria:

- (a) the name of the debtor; or
- (b) if collateral is required by this Act or by the regulations to be described by serial number in a notice of security interest, the serial number of the collateral; or
- (c) the registration number assigned to the registration under section 120.

**149 Printed search result receivable as evidence**

A printed search result that purports to be issued by the register is receivable as evidence and is, in the absence of evidence to the contrary, proof of the registration of any notice of security interest to which the search relates, including:

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

## **PART 11 MISCELLANEOUS**

### **150 Entitlement to damages for breach of obligations**

- (1) If a person fails to discharge any duty or obligation imposed on that person by this Act, the person to whom the duty or obligation is owed and any other person who can reasonably be expected to rely on performance of the duty or obligation have a right to recover damages for any loss or damage that was reasonably foreseeable.
- (2) Nothing in subsection (1) limits or affects any liability that a person may incur under any rule of law or enactment other than this Act.
- (3) The Registrar or any of its staff are not to be liable for any acts done in good faith while providing support on requests made pursuant to subsections 115(3), 121(2) and 147(2).

### **151 Secured party to provide certain information relating to security interest**

- (1) The debtor, a judgment creditor, a person with a security interest in personal property of the debtor, or an authorised representative of any of them, may request the secured party to send or make available to any specified person, at an address specified by the person making the request, any of the following:
  - (a) a copy of a security agreement that creates or provides for a security interest held by the secured party in the personal property of the debtor; or
  - (b) with the prior written approval of the debtor, a statement of the amount of the indebtedness and the terms of payment of the indebtedness; or
  - (c) with the prior written approval of the debtor, an itemised list of personal property indicating which items are secured, unless the security interest is over all of the personal property of the debtor.
- (2) Subsection (1) does not apply if the information requested under that subsection must be, or has already been, made available under any other Act or rule of law, to the person who made the request.

### **152 Time for complying with request**

A secured party who is required to comply with a request made under subsection 151 (1) must comply with the request within 10 working days of the receipt of the request, unless the secured party has been exempted under section 153.

### **153 Exemption from complying with request**

The Court may, on application by a secured party, make an order exempting the secured party from complying with a request made under section 151 in whole or in part or

extending 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.

**154 Secured party may recover costs arising from request**

- (1) A secured party, who is required under section 151 to provide certain information, may charge the person requesting the information reasonable costs for providing the information, unless the person who has requested the information is the debtor.
- (2) A debtor who has requested information under section 151 is entitled to be supplied free of charge with that information.

**155 Application to court for compliance with request**

The Court may, on application by the person who made a request under section 151, make an order requiring the secured party to comply with the request if, without reasonable excuse, the secured party failed to comply with the request.

**156 Consequences of not complying with court order**

If a person fails to comply with a court order made under section 155, the Court may, on the application of the person who made the request under section 151:

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

**157 Obligation to disclose successor in security interest when request made**

Where a person makes a request under section 151 and the person to whom the request was made no longer has an interest in the obligation or collateral, that person must send or make available to the person making the request the name and address of the immediate successor in interest and the latest successor in interest, if known.

**158 Application of sections 159 to 163**

Sections 159 to 163 do not apply to:

- (a) notices or other documents served or given in any proceedings in a court; and
- (b) notices or other documents served or given in accordance with another procedure specified in the security agreement for serving or giving notices or other documents.



**159 Method of service of notices, etc**

- (1) Any notice or any other document required or authorised by this Act to be served on or given to any person must be in writing and is sufficiently served or given if:
- (a) it is delivered to that person or that person's agent; or
  - (b) it is left at that person's or that person's agent's usual or last known place of abode or business or at an address specified for that purpose in the security agreement; or
  - (c) it is posted in a letter addressed to that person or that person's agent by name at that place of abode or business or address; or
  - (d) it is given by facsimile, electronic mail, or other similar means of communication, or
  - (e) its terms are broadcast over local radio available and transmitted throughout Vanuatu subject to the announcement:
    - (i) being addressed to the person concerned; and
    - (ii) stating the person's name and last known address; and
    - (iii) stating where a copy of the document can be collected by the person.
- (2) If the person is deceased, it may be served on or given to that person's personal representative.

**160 Court may make order concerning service of notice, etc**

Despite anything in section 159, a court may in any case make an order directing the manner in which any notice or other document is to be served or given, or dispensing with the service or giving of the notice or document.

**161 Service of notice by mail**

If any notice or other document is sent to any person by registered or express mail, it is deemed to have been delivered to that person at the time when the letter would in the ordinary course of post be delivered and, the signed receipt shall constitute proof of delivery.

**162 Effecting service of notice by facsimile**

A notice or document served or given by facsimile is, in the absence of proof to the contrary, regarded as having been served or given if the facsimile machine generated a record of the transmission of the notice or document to the facsimile machine of the

recipient, and the date of the record is deemed to be the date of receipt of the notice or document.

### **163 Effecting service of notice by electronic mail**

A notice or document served or given by electronic mail or other similar means of communication is, in the absence of proof to the contrary, regarded as having been served or given if:

- (a) the computer system used to transmit the notice or document:
  - (i) has received an acknowledgment of receipt to the electronic mail address of the person transmitting the notice or document; or
  - (ii) has not generated a record that the notice has failed to be transmitted; or
- (b) the person who served the notice or document proves that the notice or document was transmitted by computer system to the electronic mail address provided by the person on whom the notice is to be served or given.

### **164 Regulations**

- (1) The Minister may make regulations for all or any of the following purposes:
  - (a) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of the register and its operation, including matters relating to:
    - (i) access to the register;
    - (ii) the location of and hours of access to the register;
    - (iii) arrangements to support a person who registers a notice of security interest and change notice, is given verification statement or obtains a printed search result;
  - (b) prescribing matters in respect of which fees are payable under this Act and the amounts of those fees;
  - (c) prescribing procedures for the payment of prescribed fees;
  - (d) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of any registrations under this Act, including prescribing:
    - (i) the description of collateral, including proceeds of collateral, that is to be included in notices of security interest and change notices;

- (ii) the kinds of goods that may or must be described in part by serial number;
    - (iii) the requirement of a description by serial number;
    - (iv) the manner of registering notices of security interest and change notices;
  - (e) prescribing the data to be entered in the register to effect, renew, discharge, or otherwise amend a registration authorised by this Act and any other matters relating to registrations under this Act;
  - (f) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of the form, use, and manner of obtaining printed or electronic verification statements to confirm a registration;
  - (g) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of transitional provisions under this Act;
  - (h) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of searching the register, including prescribing:
    - (i) the method of disclosure;
    - (ii) the form of search results;
    - (iii) the rules applied by the registry to determine what notices will be included in the search results;
  - (i) prescribing forms for the purposes of this Act;
  - (j) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of notices under this Act, including prescribing:
    - (i) the matters in respect of which notices are required under this Act;
    - (ii) the form of notices under this Act;
  - (k) prescribing the kinds of goods the leases of which are not within the scope of this Act;
  - (l) providing for such other matters as are contemplated by or necessary for giving effect to this Act and for its due administration.
- (2) A regulation made under subsection (1) may be made in respect of different persons, transactions, classes of persons, or classes of transactions.

## **PART 12 TRANSITIONAL PROVISIONS**

### **165 Interpretation**

In this Part, unless the context otherwise requires:

**existing secured party** means a holder of a prior security interest;

**prior registration law** means the Companies Act [CAP 191], the Bills of Sale Regulations and the International Companies Act [CAP 222];

**prior security interest:**

- (a) means a security interest created or provided for by a security agreement or other transaction that was made or entered into before the commencement of this Act and that had not been terminated before that commencement date; and
- (b) 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 Act;

**prior third party interest** means a third party interest that arose before the commencement of this Act;

**transitional period** means the period of 12 months commencing on the commencement of this Act.

### **166 Prior security interests continue to be enforceable against third parties during transitional period**

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

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

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

### **168 Certain other prior security interests deemed to be perfected during transitional period**

A prior security interest (other than a prior security interest to which section 167 applies) is, during the transitional period, deemed to be perfected by registration under this Act if the prior security interest had (under the prior law and without the collateral relating to that prior security interest being taken into possession by the secured party) priority over any other prior security interest.

**169 Prior security interests perfected during transitional period**

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

**170 Consequences of not perfecting certain security interests**

A prior security interest that is deemed to be a perfected security interest under section 167 or section 168 and that is not perfected under this Act within the transitional period is deemed to be an unperfected security interest on the close of the transitional period.

**171 Time of registration of certain prior security interests**

Subject to section 172 for the purposes of this Act, the time of registration of a prior security interest that is deemed to be perfected by registration under this Act during the transitional period is:

- (a) the time that the security interest was registered under prior registration law (where the prior security interest is deemed to be perfected by registration under section 167);
- (b) the time that the security interest was created (where the prior security interest is deemed to be perfected by registration under section 168).

**172 Competing priority claims perfected during transitional period**

Once the transitional period has concluded, in respect to competing priority claims between two or more prior security interests which have been perfected during the transitional period, these will be determined by the relevant laws that have existed before the commencement of this Act.

**173 Priority of prior security interests during transitional period**

- (1) During the transitional period:
  - (a) priority between prior security interests will be determined by the prior law; and
  - (b) priority between a prior security interest that is deemed to be perfected by registration under section 167 or section 168 and a security interest perfected in accordance with this Act will be determined by this Act; and
  - (c) priority between an unperfected prior security interest and another unperfected security interest will be determined by the order in which attachment occurred.
- (2) During the transitional period, prior security interests deemed to be perfected under section 167 or section 168 and security interests perfected in accordance with this Act will have priority over any unperfected security interests.

**174 Priority of third party interests during transitional period**

During the transitional period:

- (a) priority between a prior security interest and a prior third party interest will be determined by the prior law; and
- (b) priority between a prior security interest and a third party interest that arose on or after the commencement of this Act will be determined by this Act; and
- (c) priority between a security interest that is not a prior security interest and a prior third party interest will be determined by this Act.

**175 Commencement**

This Act commences on the date on which it is published in the Gazette.