

Nepal Gazette

Published by the Government of Nepal

Volume 56) Kathmandu, 30 Kartik 2063 (16 November 2006) (Extra-ordinary 44

Part 2

Government of Nepal

Ministry of Law, Justice and Parliamentary Affairs

The following Act enacted by the House of Representatives in the First Year of the issuance of the Proclamation of the House of Representatives, 2063 (2006) is hereby published for information of the general public.

Act number 19 of the year 2063 (2006)

An Act Made to Provide for Secured Transactions

Preamble:

Whereas, it is expedient to make provisions forthwith to secure obligations with movable and intangible property by making consolidated legal provisions in relation to secured transactions for the maximum promotion of economic activities for the economic development of the country;

Now, therefore, be it enacted by the House of Representatives in the First Year of the issuance of the Proclamation of the House of Representatives, 2063(2006).

CHAPTER- 1

Preliminary

1. Short title and commencement:

- (1) This Act may be cited as the “Secured Transactions Act, 2063 (2006).”
- (2) It shall come into force at once.

2. Definitions:

Unless the subject or the context otherwise requires, in this Act,-

- (a) “court” means the commercial bench of such court as may be specified by the Government of Nepal, with the consent of the Supreme Court, by a notification in the Nepal Gazette;
- (b) “instrument” means a deed which can be transferred to another person by way of endorsement or assignment in the ordinary course of business and a share certificate, and this term also includes any deed that evidences a right to the payment of money.

Provided that this expression does not mean a security agreement or lease.

- (c) “intangible property” means movable property other than goods, accounts, secured sales contract, deeds, instruments and cash, which create legal right;

- (d) “record” means any information that is stored in any deed or electronic or other medium in such a manner that it can be perceived, seen, opened or retrieved as per necessity, and this term also includes a notice under this Act;
- (e) “consumer goods” means any goods used for personal, family or household purposes;

Provided that this expression does not mean any serial numbered vehicles.

- (f) “equipment” means any goods other than farm products, inventory or consumer goods;
- (g) “serial numbered vehicle” means a motor vehicle, a trailer of motor vehicle, an aircraft or a motorized boat, when not held as inventory of a security giver;
- (h) “farm products” means the following goods of a security giver engaged in farming, other than standing timber:
 - (1) crops grown, growing, or to be grown;
 - (2) aquatic animals produced in water;
 - (3) livestock (including the unborn);
 - (4) goods used or produced in a farming operation;
 - (5) products of crops or livestock in their unmanufactured state.
- (i) “purchase money security interest” means a security interest up to the following extent:

- (1) taken or retained by the seller of goods to secure all or part of the price of such goods; or
 - (2) taken by a person other than the seller who gives value or consideration to enable the security holder to acquire rights in or the use of goods, and such value or consideration is in fact used for the purpose for which it has been taken.
- (j) “fixture” means goods that are fixed to immovable property, or are intended to become fixed to immovable property, in a manner that causes a property right to arise in the goods under the laws in force.

Provided that readily removable or detachable factory machines, office machines or domestic appliances are not fixtures.

- (k) “guarantee” means a secondary obligation such as an obligation to pay, or an issuer’s obligation to pay under a letter of credit, and this term also includes an obligation that supports the payment on an account, secured sales contract, document, instrument or other intangible property.
- (l) “Registration Office” means the secured transactions registration office established pursuant to Section 4.
- (m) “obligor” means the person who is obligated on an account, secured sales contracts or other intangible property.

- (n) “security holder” means a lender or creditor or seller or other person in whose favor a security interest is created under a security agreement, and this term also includes a purchaser of accounts or secured sales contracts and a lessor of goods.
- (o) “security giver” means the person who owes payment or other performance of the secured obligation, whether or not the person owns or has rights in the collateral, and this term includes a seller of accounts or secured sales contracts and a lessee of goods.
- (p) “collateral” means any intangible property of any nature, fixtures, movable property such as timber to be cut, minerals to be extracted, which is subject to a security interest, and this term includes collateral that arises in the future, collateral located in or outside of the country, accounts or secured sales contracts that have been sold, leased goods and proceeds of collateral.
- (q) “security agreement” means an agreement that creates or provides for a security interest.
- (r) “security interest” means a property right in collateral that secures performance of an obligation.
- (s) “buyer in the ordinary course of business” means a person who buys, in the ordinary course, goods from a person in the business of selling goods of that kind, if the buyer buys in good faith and without knowledge that the sale violates the rights of another person in the goods.

- (t) “lessee in the ordinary course of business” means a person who, in good faith and without knowledge that the lease is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in the ordinary course from a person in the business of selling or leasing goods of that kind.
- (u) “purchaser” means a person who takes any property or takes any interest in such property in any manner.
- (v) “account” means an account that creates a right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or secured sales contract.
- (w) “inventory” means goods held for sale or lease in any trade or business, and this term also includes raw materials used in any enterprise or business, semi-prepared or prepared goods, or materials used or consumed in such enterprise or business.
- (x) “value” means any consideration made or to be made in accordance with a contract.
- (y) “goods” means all kinds of things that are movable when a security interest attaches, and this term also includes fixtures, timber to be cut and removed for sale and farm products.

Provided that this term does not include accounts, secured sales contracts, currency, documents or instruments.

- (z) “lease of goods” means a lease of the following goods:
- (1) a lease of goods for a duration of more than one year;
 - (2) a lease of goods for an indefinite term;
 - (3) a lease of goods for an initial term of one year or less if the lessee, with the consent of the lessor, retains uninterrupted possession of the leased goods for more than one year after the lessee first acquired possession of the goods.

Provided that the lease does not become a lease for a term of more than one year until the lessee's possession extends beyond one year.

- (4) a lease of goods for a term of one year or less where the lease provides that it is renewable for a period that may exceed one year.
- (aa) “Registrar” means a person who is appointed or designated pursuant to sub-section (3) of Section 4.
- (bb) “lien holder” means the following persons:
- (1) a person who obtains a right in a security holder’s collateral or a right to seize such collateral, by order of a court or of any authority under the laws in force or of an administrator in an insolvency proceeding under the laws in force relating to insolvency;

- (2) any other person who obtains a right in a security holder's collateral by operation of law, except a person with a right of retention of collateral.
- (cc) "document" means a document of title or a receipt such as a bill of lading or warehouse receipt issued by a person carrying on the business of transporting or storing goods.
- (dd) "proceeds" means proceeds derived or to be derived from the following activities:
 - (1) whatever is acquired upon the sale, lease, license, exchange, or other disposition of, collateral;
 - (2) whatever is collected on, or distributed with respect to, collateral;
 - (3) rights arising out of collateral;
 - (4) to the extent of the value of collateral, claims arising out of the loss of or damage to, defects in, or violation of the terms of, the collateral;
 - (5) to the extent of the value of collateral and to the extent payable to the security giver or the security holder, insurance payable by reason of the loss of or damage to, or violation of the terms of, the collateral.
- (ee) "cash proceeds" means proceeds such money, cheques, funds on deposit, and this term also includes similar other cash proceeds.

(ff) “sign” means to execute or adopt a name or symbol by any means, with intent to identify the signing party or to adopt or establish the authenticity of a record.

Provided that this term does not mean the compulsion to make a manual signature.

(gg) “acquisition of property” means an act of taking a property by a person receiving security as a buyer, donee, security holder or mortgagee, or creating an interest in the property by any other voluntary transaction.

(hh) “notice” means a record filed or presented for filing in the Registration Office, and this term also includes amendments, continuation statements, and termination statements that are filed or presented for filing.

(ii) “secured sales contract” means a record that creates a debt liability and a security interest in goods or in a lease of goods.

(jj) “assignment” means the transfer from one person to another, in whole or in part, of a right to payment in an account, secured sales contract, document, instrument, or other right to payment.

(kk) “assignee” means a person who takes an assignment of right or payment.

(ll) “assignor” means the person who makes an assignment of right or payment.

3. Applicability of the Act:

- (1) This Act shall apply to the following transactions:
 - (a) all transactions where the effect is to secure an obligation with collateral, including pledge, hypothecation and hire-purchase;
 - (b) the sale of accounts and secured sales contracts; and
 - (c) the lease of goods.

Explanation: For the purposes of this Section, the term hypothecation means only the hypothecation of a movable property.

- (2) This Act shall apply to transactions mentioned in sub-section (1), regardless of anything contained in the agreement entered into between the parties and whether the ownership right in collateral is held by the security holder or the security giver.
- (3) Notwithstanding anything contained in sub-sections (1) and (2), this Act shall not apply to the following transactions:
 - (a) the transfer of a claim for compensation of an employee;
 - (b) a sale of accounts or secured sales contracts as part of the sale of a business out of which they arose;
 - (c) an assignment of accounts, secured sales contracts or instruments, which is made for the purpose of collection; and

- (d) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract.

Chapter-2

Establishment and Operation of Secured Transactions Registration Office

4. Establishment of Registration Office:

- (1) The Government of Nepal shall establish a Registration Office called as the Secured Transactions Registration Office for registering notices as provided in this Act.
- (2) Until the Registration Office is established pursuant to sub-section (1), the Government of Nepal may designate any office to perform the function of registering notices pursuant to this Act.
- (3) In order to manage the affairs of the Registration Office, the Government of Nepal may appoint or designate at least gazetted second class or equivalent employee as the Registrar.
- (4) The Registrar appointed or designated pursuant sub-section (3) shall perform the functions and duties prescribed by this Act.

5. Functions, duties and powers of Registration Office:

- (1) The functions, duties and powers of the Registration Office shall be as follows:

- (a) establishing, operating and maintaining an electronic registry for the filing of notices or amendments related with notices, continuation statements, termination statements and correction statements and notices of the interests of lien holders;
 - (b) delivering to any person who so requests, information from the records of the Registration Office records as provided in this Act;
 - (c) publishing an annual report on the functions that it has performed within six months of the end of each fiscal year.
- (2) The Government of Nepal may enter into an agreement with a private entity for the performance of any or all of the activities required to be performed by the Registration Office and seek assistance, as required, for the discharge, through such entity, of the activities required to be performed by the Registration Office. Prior to entering into an agreement with such entity, the Registration Office shall have regard to whether such entity is competent as follows or not:
- (a) Whether or not such entity has the required materials, financial, human, and technical resources to assist the Registration Office in the activities relating to filing notices;
 - (b) Whether or not such entity has the ability to have access to the electronic registry maintained by the

Registration Office, in consistent with prudent business practices.

6. Right of access to notices of Office:

- (1) Information contained in notices filed pursuant to this Act shall remain as public records.
- (2) Indexes and other records created by the Registration Office with respect to the notices, in any form or medium, shall remain as public records.
- (3) Every person shall have the right to inspect and obtain required copies of records referred to in sub-section (1) or (2) held by the Registration Office.

7. Contents of initial notice:

- (1) An initial notice shall state the following matters, at a minimum:
 - (a) The name, address and other particulars of the security giver;
 - (b) The name, address and other particulars of the security holder or an agent of the security holder;
 - (c) Details relating to collateral.

Provided that such notice shall also provide a description of the relevant immovable property if it covers timber to be cut, minerals to be extracted or fixtures to collateral.

- (2) A security giver or a person authorized by the security giver may file an initial notice with the Registration Office in accordance with this Act. The deed of authorization given by the security giver need not be contained in such notice.
- (3) Where a security giver has concluded a security agreement, the security giver shall be deemed to have authorized the filing of an initial notice or amendment covering the collateral described in the security agreement or proceeds of such collateral, whether or not the security agreement expressly provides about such collateral and proceeds from such collateral.
- (4) An initial notice may be filed pursuant to this Section before a security agreement is concluded or before a security interest attaches to collateral.
- (5) An initial notice shall be considered to be effective pursuant to this Act if the notice complies with the other requirements contained in this Chapter and does not mislead despite that the notice does not contain any such matter as required to be contained under this Section.

8. Sufficiency of name in a notice:

- (1) Where a notice provides the following matters, the name of a security giver shall be considered to be sufficiently provided in the notice:

- (a) where the security giver is an individual, and such notice contains the citizenship number mentioned in the Nepalese citizenship certificate obtained by him or her;
- (b) where the security giver is a non-Nepalese national, and such notice contains the name as indicated in the passport obtained by him or her, the name of the country that issued the passport and the passport number;
- (c) where the security giver is a body corporate established under the laws in force, and such notice contains the name of the security giver as recognized after establishment under the laws in force and the registration certificate number;
- (d) where the security giver is a foreign body corporate qualified to do a business in the State of Nepal under the laws in force, and such notice contains the name of such body as recognized under the laws in force to do transaction in the State of Nepal; and
- (e) where the security giver is a foreign body corporate which is not registered under the laws in force relating to companies but is allowed to do a business in the State of Nepal under the laws in force, and such notice contains the name as recognized under the laws in force of the country where such body corporate has been incorporated.

- (2) Where a notice sufficiently provides the name of the security giver, such notice shall not be considered to be ineffective only by the reason that such notice does not contain a trade name or other name of the security giver.

Provided that where a notice contains only the trade name of a security giver, such notice shall not be considered to sufficiently contain the name of the security giver.

- (3) A notice may contain the name of more than one security giver and the name of more than one security holder.
- (4) Only the failure to indicate on a notice that a person is an agent of the security holder shall not affect the sufficiency of the notice.

9. Effect of changes in notice:

- (1) Where a collateral is sold, exchanged, leased, licensed or otherwise disposed of, a notice filed with respect to the collateral shall remain effective even after such disposition even if the security **giver** knows of or consents to such disposition.
- (2) Even if a security giver changes his or her name in such a manner that a notice filed in accordance with this Act becomes seriously misleading, the notice shall remain effective to perfect a security interest in collateral acquired by the security giver before the date of such change in name or within four months after that date. The notice shall be considered to remain effective to perfect a security interest in

collateral acquired by the security giver after four months of the change in name only if a change in name is filed and the name is corrected within four months of the change that corrects the name.

- (3) Except as provided otherwise in relation to the change in the name of security giver pursuant to sub-section (2), a notice shall remain effective even if, after the notice is filed, a change of circumstances renders the notice seriously misleading.

10. Duration of notice and effect of lapse thereof:

- (1) A notice filed in accordance with this Act shall remain effective for a period of five years after the date of filing. The notice so filed shall cease to remain effective on the expiration of a period of five years period unless a continuation statement is filed before the expiration of the term of such notice.
- (2) Except where the security interest is perfected without filing, a notice shall become ineffective and any security interest that was perfected by the notice shall become unperfected upon the expiration of the validity period of that notice.
- (3) Where a security interest becomes unperfected by the reason of expiration of the validity period of a notice, the security interest shall, in no case, be deemed to have been perfected against a person who acquires the collateral for value before or after the expiration of such notice.

11. Security holder on the notice:

- (1) A security holder on the notice is a person whose name is mentioned as the name of the security holder or representative of the security holder in an initial notice or amendment that has been filed in accordance with this Act.
- (2) Unless and until the name of a security holder on the notice is omitted by filing an amendment to the notice pursuant to subsection (1), that person shall remain as the security holder.

12. Amendment of notice:

- (1) An initial notice may be amended by one or more than one amendment. An amendment notice to the initial notice shall contain the following matters:
 - (a) the initial notice has to be identified by its file number;
 - (b) the security holder on the notice who authorizes the amendment has to be identified;
 - (c) that it is an amendment to the notice has to be clearly mentioned; and
 - (d) all information required to be mentioned in an initial notice has to be provided, completely restating the notice in a manner that reflects the amended state of the notice.
- (2) If a security giver gives authorization by a signed record and files an amendment notice and such amendment notice adds collateral covered by a notice or adds a security giver to a

notice, that amendment shall be effective. By concluding a security agreement, a security giver shall be deemed to authorize the filing of an amendment covering the collateral described in the security agreement, and proceeds of the collateral, whether or not the security agreement expressly covers proceeds.

- (3) If a notice contains more than one person as the security holder, each of such persons may authorize anyone to file an amendment.
- (4) If a notice contains more than one person as the security holder, the amendment shall be effective if any one security holder authorizes the filing, by a signed record.
- (5) An amendment authorized by one security holder on the notice shall not affect the rights of another security holder mentioned in the notice.
- (6) An amendment that adds collateral shall be effective as to the added collateral only from the date of the filing of the amendment.
- (7) Where an amendment is filed to add a security giver, the amendment shall be effective as to the added security giver only from the date of the filing of the amendment.
- (8) Any amendment, other than an amendment to add collateral or a security giver, shall be effective only if a security holder on the notice authorizes the filing, by a signed record.

- (9) An amendment shall be ineffective if it purports to delete all security holders mentioned in the notice or fails to provide the name of a new security holder instead of the security holders so deleted or purports to delete the names of all security givers mentioned in the notice or fails to provide the name of a new security giver instead of the security givers so deleted.
- (10) The filing of an amendment shall not extend the validity period of a notice.

13. Continuation of notice:

- (1) The validity period of a notice may be extended by filing a continuation statement that contains the following particulars:
 - (a) particulars identifying the initial notice by its file number;
 - (b) particulars identifying a security holder mentioned in the notice who authorizes the continuation statement;
 - (c) particulars indicating that the effectiveness of the notice, with respect to the security holder who authorized the filing, is to be continued.
- (2) A continuation statement may be filed only within six months before the expiration of the five-year's validity period of the notice.
- (3) Where a continuation statement is filed within the period pursuant to sub-section (2), the notice shall remain valid for a period of five years commencing from the date on which the

notice would have become ineffective if such statement had not been filed.

- (4) If there is more than one security holder mentioned in a notice, the notice shall remain valid only with respect to the security holder who has authorized the filing of the continuation statement until the period as referred to in sub-section (3).
- (5) The validity period of a notice shall lapse with respect to a security holder unless another continuation statement authorized by that security holder is filed prior to the expiry of the validity period of the notice pursuant to sub-section (3). Succeeding continuation statements shall be filed in the same manner as a notice is required to be filed to continue the validity period of the notice.

14. Termination of notice:

- (1) The effectiveness of a notice may be terminated by filing a termination statement that:
 - (a) identifies the initial notice by its file number;
 - (b) identifies a security holder mentioned in the notice who authorizes the termination statement;
 - (c) indicates that the notice is no longer effective with respect to the security holder who authorizes the filing.
- (2) If the following conditions are met and the security holder receives a written demand made by the security giver, the

security holder mentioned in a notice shall file a termination statement within twenty days of receipt of such demand:

- (a) there is no outstanding secured obligation and no commitment to make an advance, to incur an obligation, or otherwise to give value; or
 - (b) the security giver has not authorized the filing of the initial notice; or
 - (c) the obligor or other person obligated has discharged his or her obligation with respect to the already sold accounts or secured sales contracts covered in the notice.
- (3) A termination statement shall terminate the interest of a security holder mentioned in the notice only if such statement is filed by the authorization of such security holder. If a termination statement is filed, the notice to which the termination statement relates shall not become effective with respect to the security holder who has given such authorization.

15. Effectiveness of notice:

- (1) Where an initial notice, amendment, continuation statement or termination statement, accompanied by the fees required, is filed with the Registration Office or such record is accepted by the Registration Office for filing, such notice or statement shall be deemed to have been filed with the Registration Office.

- (2) Notwithstanding anything contained in sub-section (1), a record submitted to the Registration Office for filing pursuant to that sub-section shall not be deemed to have been filed if the Registration Office refuses to file such record in any of the following circumstances:
- (a) where the record is not accompanied by the fees required for filing pursuant to this Act;
 - (b) where, in the case of an initial notice, the name of a debtor is not mentioned;
 - (c) where an amendment statement of notice does not mention the file number of the initial notice, does not mention the name of a debtor or where the term of the notice related with amendment has expired;
 - (d) where a continuation statement does not mention the file number of the initial notice or where such continuation statement is not submitted within a period of six months pursuant to sub-section (2) of Section 13; and
 - (e) where a termination statement does not mention the file number of the initial notice.
- (3) Except in the cases referred to in sub-section (2), even though the Registration Office refuse to file an initial notice, amendment notice, continuation statement or termination statement submitted to it for filing, such record shall be deemed to have been filed.

Provided that where a purchaser of the collateral has given value in reasonable reliance upon that such notice has not been filed, this provision shall not be applicable to such purchaser.

- (4) Where the Registration Office refuses to accept a record for filing, it shall promptly communicate a notice along with the reason for such refusal to the concerned person.
- (5) A filed notice shall be effective only to the extent that it was filed by a person authorized to file it pursuant to this Act.
- (6) A notice authorized by one security holder mentioned in a notice shall not affect the rights of another security holder mentioned in the notice.
- (7) The failure of the Registration Office to index a record correctly shall not affect the effectiveness of the record.

16. Claim concerning wrongfully filed notice:

- (1) Where a person believes that a notice filed in the Registration Office under the name of that person is not based in fact or has been wrongfully filed, that person may file in the Registration Office a correction statement setting out the following matters:
 - (a) identifying the record to which it relates by the file number assigned to the initial notice;
 - (c) the basis for that person's belief that the record is inaccurate and the manner in which that person believes

the record should be amended to cure any inaccuracy or the basis for that person's belief that the record was wrongfully filed.

- (2) The filing of a correction statement pursuant to this Section shall have no effect on the effectiveness of a notice.

17. Duties of Registration Office:

- (1) The Registration Office shall do as follows, in respect of each notice filed with it:
 - (a) designating a separate filing number to each filed record;
 - (b) creating a record that bears the filing number assigned to each record and the date and time of filing; and
 - (c) maintaining each record open for public inspection.
- (2) The Registration Office shall file an initial notice by the name of the security giver.
- (3) The Registration Office shall file an initial notice and all records relating to the initial notice in a manner that associates such notice and records with each other;
- (4) In the case of notices containing serial numbers of serial numbered vehicles, the Registration Office shall maintain an index of serial numbers.
- (5) The Registration Office shall maintain records of expired notices for a period of ten years after the date of expiry.

- (6) The duties of the Registration Office shall be merely administrative. While filing or refusing to file a notice, the Registration Office shall not determine that such notice is sufficient or insufficient or that information mentioned in the notice is correct or incorrect.

18. Information to be obtained from Registration Office:

- (1) The Registration Office shall provide the following information to any person that requests it for any information:
 - (a) whether or not any notice that designates a particular security giver and is valid with respect to all security holders is filed or not at such date and time as specified by the Registration Office;
 - (b) the file number, and the date and time of filing of each notice;
 - (c) the name and address of each security giver and security holder mentioned in each notice;
 - (d) the description of collateral mentioned in each notice or amendment; and
 - (e) the file number, and the date and time of filing of each record relating to each initial notice, and identification of the record as an amendment, continuation statement, correction statement or termination statement.
- (2) A request, setting out any of the following matters, may be made to the Registration Office to search records:

- (a) the file number of an initial notice;
 - (b) the serial number of a serial numbered vehicle;
 - (c) the citizenship certificate number of a security giver if he or she is a citizen of Nepal; or
 - (d) the name and passport number of a security giver if he or she is not a citizen of Nepal.
- (3) In performing its duties, the Registration Office may communicate information or notices by any means.

19. Provisions relating to filing fees:

- (1) A fee of five hundred rupees shall be charged for filing each initial notice, amendment notice, continuation statement, termination statement, correction statement or for the search of records.
- (2) Notwithstanding anything contained in sub-section (1), no fee shall be for searching records by using the electronic technology provided by the Registration Office.
- (3) No fee shall be charged for other services provided pursuant to this Act.
- (4) The Registrar may establish procedures for establishing accounts for users of the services provided by the Registration Office and for periodic payment of fees charged for such services.

Chapter - 3

Provisions Relating to Security Interest

20. Security interest:

- (1) Any person may give and take a security interest under this Act, subject to sub-section (2). In so giving and taking a security interest, the security interest may also be given and taken in a manner that more than one person can get the security interest in any collateral.
- (2) No security interest other than a purchase money security interest may be created in consumer goods of a security giver.
- (3) A security interest shall not be deemed to be invalid by the reason only that the security giver retains the right to use, possess, sell, exchange, commingle, or otherwise transfer the title to, the collateral.

21. Secured obligations:

- (1) A security interest created pursuant to Section 20 may secure one or more obligations described specifically or in general terms.
- (2) Secured obligations referred to in sub-section (1) may be monetary or non-monetary.
- (3) A security interest may also secure future obligations. Such obligations may be mandatory, conditional or optional.
- (4) A security interest may also secure pre-existing obligations.

22. Collateral description:

A description of a collateral shall be deemed to be sufficient if it reasonably identifies what is intended to be described. A description of a collateral may also be expressed in general terms except as provided otherwise in this Act with respect to serial numbered vehicles.

Explanation: For the purposes of this Section, the expression “in general terms” shall mean a description indicated by a security giver by using phrases such as “all assets” or “all movable property” of the security giver, except with respect to consumer goods.

23. Effectiveness of security agreement:

- (1) A security agreement shall be in the form of a record. A security agreement may be found in one or more than one record.
- (2) A security agreement shall apply according to its terms to the parties, purchasers of the collateral, creditors and lien holders, except as otherwise provided in this Act.
- (3) A security agreement may relate to one or more than one security interest.

24. Collateral in security holder’s possession:

- (1) A security holder shall take reasonable care of the collateral in the security holder's custody and preservation.
- (2) Except as otherwise agreed, if a collateral is in the security holder's possession, the following provisions shall apply:

- (a) the liability of the security giver shall be to pay reasonable expenses including the cost of insurance of the collateral and taxes or fees associated with the collateral, and such expenses shall be realized from the collateral;
- (b) in the event of accidental loss of or damage to the collateral, the security giver shall bear the risk up to the extent not covered by insurance;
- (c) the security holder shall hold as additional security any increase, except money, received from the collateral and may apply such money to reduce the secured obligation unless the money is reimbursed to the security giver.

25. Attachment of security interest to collateral:

- (1) A security interest shall be attached to a collateral and become enforceable against the security giver and third parties with respect to the collateral only in the following circumstances:
 - (a) where a security agreement has been entered into, providing a description of the collateral;
 - (b) where the security holder has given value to the security giver; and
 - (c) where the security giver has rights in the collateral or the power to transfer such collateral to the security holder.

- (2) Except as otherwise agreed, the attachment of security interest in a collateral shall provide the security holder with the right to a security interest in proceeds of such collateral as provided in this Act.

Chapter - 4

Perfection and Priority of Security Interest

26. Perfection of security interest:

- (1) A security interest shall be deemed to have perfected when it has attached to collateral and the requirements referred to in this Section are satisfied.
- (2) Except as provided otherwise in this Section, a notice shall be filed in the Registration Office to perfect a security interest.
- (3) A purchase money security interest in consumer goods shall be perfected only when it attaches to the consumer goods. It shall not be required to file a notice thereof.
- (4) A security interest in goods, instruments, documents or secured sales contracts shall be perfected only when the security holder takes possession of such collateral. It shall not be required to file a notice for this. A security interest in goods, instruments, documents or secured sales contracts shall be perfected by possession from the time when possession is taken and shall continue so long as such possession is retained. The security holder may perfect a security interest in goods, instruments, documents or secured sales contracts

perfected by possession under this sub-section, by filing before, during or after the period of possession.

- (5) A security interest in money may be perfected only when the security holder takes possession of the money other than cash proceeds.
- (6) A security interest in a serial numbered vehicle shall be perfected only when a notice that describes the serial numbered vehicle generally or by serial number is filed.
- (7) The filing of a notice shall not be necessary to perfect a security interest in proceeds.
- (8) While goods are in the custody of a bailee that has issued a document covering the goods, a security interest in the goods may be perfected only after perfecting a security interest in the document. Where a security interest in the goods is perfected by filing a notice during the period that the goods are in the custody of the bailee, such security interest shall be related to a security interest perfected in the document.
- (9) Perfection of a security interest in collateral shall also perfect a security interest in a guarantee supporting the collateral. The filing of a notice shall not be necessary to perfect a security interest in the guarantee.
- (10) Perfection of a security interest in a right to payment or performance shall also perfect a security interest in a mortgage on immovable property securing the right to payment.

27. Continuity of perfection:

- (1) A security interest shall be deemed to be perfected continuously if it is first perfected in one manner and later perfected in another manner in a manner that the continuity of the security interest is not interrupted.
- (2) If a security holder assigns a perfected security interest, it shall not be required to file a notice under this Act to give continuity to the perfection of the security interest against creditors of the security giver, transferees from the security giver, and lien holders.

28. Priority among security interests in the same collateral:

- (1) Except as provided otherwise in this Act, where security interest of more than one person is created in the same collateral, out of a security interest in respect of which a notice has been filed and a security interest in respect of which a notice has not been filed, the security interest in respect of which a notice has been filed shall get priority. Even amongst the security interests in respect of which a notice has been filed, such security interest shall get priority according to the time of filing of a notice of security interest or the time of perfection of security interest.
- (2) The security interest shall be given priority according to the time when an initial notice covering the security interest is filed or the time when the security interest is first matured, whichever occurs earlier. While determining the priority of security interests, such notice should not be ineffective after

the filing of a notice for the first time or after maturing the security interest or the continuity of perfection of such security interest should not be interrupted pursuant to subsection (1) of Section 27.

- (3) The first security interest attached to collateral shall have priority over a security interest for which a notice has not been effective or which has not been perfected under this Act.
- (4) The date of filing or perfection set with respect to collateral shall be deemed to be the date of filing or perfection of a security interest in the proceeds of that collateral.

29. Priority of security interest over right of lien holder:

In cases other than where a lien holder has filed a notice prior to the maturity of a security interest and prior to the filing of a notice covering the collateral subject to this Act, a security interest shall have priority over the right of a lien holder.

30. Effect of purchase of collateral:

- (1) Where a buyer buys collateral by giving value for the collateral without having knowledge of the existence of a security interest and before the security interest is perfected, the security interest attached to the collateral that such buyer has bought shall not affect such buyer.

Provided that the buyer has to acquire the right in the collateral of tangible property without having knowledge of such security interest and before it is perfected.

- (2) Without prejudice to the generality of sub-section (1), the following provisions shall govern the following matters:
- (a) In the case of a buyer in the ordinary course of business buys goods, a security interest in such goods shall not affect the buyer even if the security interest in such goods is perfected and even if the buyer knows of the existence of such interest;
 - (b) Where a person, who buys consumer goods, buys such goods without having knowledge of the security interest and before a notice is filed that covers the consumer goods, a security interest in such consumer goods shall not affect that person irrespective of whether the security interest in such consumer goods is perfected or not;
 - (c) Where a person who buys a serial numbered vehicle buys that vehicle without having knowledge of a security interest in that vehicle or a filed notice does not mention a description of serial number of such vehicle or mentions such description incorrectly, a security interest in such serial numbered vehicle shall not affect that person;
 - (d) In the case of a person who buys farm products:
 - (1) A security interest in the farm products which are bought for use as consumer goods shall not affect such purchase;

- (2) in the case of farm products which are not bought for use as consumer goods, where the buyer takes delivery of such farm products without having knowledge of a security interest in such products and before such right is perfected, the security interest shall not affect such purchase.

31. Lessee of collateral:

- (1) Where a lessee of goods receives delivery of the goods without having knowledge of a security interest in such goods and before the security interest is perfected, the security interest in such goods shall have no effect on his or her leasehold interest in such goods.
- (2) Even though a lessee in the ordinary course of business knows that a security interest in such goods is perfected and such interest exist, the security interest in such goods shall have no effect on his or her leasehold interest.
- (3) Where a person who leases a serial numbered vehicle leases that vehicle without having knowledge of a security interest in that vehicle or a filed notice does not mention a description of serial number of such vehicle or mentions such description incorrectly, a security interest in such serial numbered vehicle shall have no effect on his or her leasehold interest;

32. Notice of purchase money security interest:

If a person files a notice with respect to a purchase money security interest in goods before or within five days after the security giver

receives delivery of the goods, such security interest shall have priority over the rights in the goods of a buyer, lessee or lien holder which arise between the time when the security interest is attached and the time when the notice is filed.

33. Disposition of collateral and proceeds:

- (1) Except as provided otherwise in this Act or agreed upon by the parties, a security interest shall continue in collateral notwithstanding a sale, lease, license, exchange or other disposition of the collateral.
- (2) Except as provided otherwise in this Act or agreed upon by the parties, a security interest shall, after the disposition of collateral, be attached to proceeds of the collateral.
- (3) Where a security interest in the original collateral is perfected, the security interest shall also continue in the proceeds of such original collateral. Except in the following circumstances, the security interest in proceeds received by the security giver shall not become perfected after twenty days from the date of receipt by the security giver of the proceeds:
 - (a) where a filed notice covers the original collateral, and the proceeds of such original collateral are cash proceeds or proceeds of the same nature as described in the initial notice; or
 - (b) where the security interest in such proceeds is perfected before the expiration of a period of twenty days.

34. Priority of purchase money security interest in equipment:

Where a purchase money security interest in equipment is perfected when the security giver receives possession of the equipment or within five days after such possession, such purchase money security interest shall have priority over a conflicting security interest in the same collateral and also over a security interest in the proceeds of that collateral.

35. Priority of purchase money security interest in inventory or livestock:

A perfected purchase money security interest in inventory or livestock shall have priority over a conflicting security interest in the same inventory or livestock in the following circumstances:

- (a) where the purchase money security interest is perfected on receiving possession by the security giver of the inventory or livestock; and
- (b) where, before the purchase money security interest holder files a notice, the holder of the conflicting security interest had already filed a notice covering the same types of inventory or livestock, and the purchase money security interest holder has given notice in writing to the holder of the conflicting security interest and the notice describes the inventory or livestock, and states that the person giving the notice has or expects to acquire a purchase money security interest in the inventory or livestock of the security giver.

36. Priority of right of retention:

Where there arises a right of retention in goods by operation of law and while such goods are taken in possession, a right of retention shall have priority over a perfected security interest in such goods in the following circumstances:

- (a) where the right of retention is created in favor of a person in possession of the goods to secure payment for materials or services with respect to such goods; and
- (b) where such materials or services are provided in the ordinary course of business.

37. Fixtures:

- (1) A security interest may be created in fixtures. Where the goods in which security interest is created are goods that become fixtures, the security interest shall continue in such goods.
- (2) Notwithstanding anything contained in sub-section (1), a security interest in ordinary building materials shall cease to exist when the building materials are incorporated into immovable property.
- (3) The priority in readily removable factory machines, office machines or domestic appliances shall not be determined pursuant to this Section.
- (4) Except as provided otherwise in this Section, a security interest in fixtures shall be subordinate to all other real rights in immovable property.

- (5) Where a notice is filed before the interest of the owner or the mortgagee of a immovable property is registered pursuant to the laws in force, a perfected security interest in fixtures shall have priority over the interest of the owner of such immovable property or a mortgagee thereof notwithstanding any provision contained in the mortgage deed.
- (6) Where a notice is filed before the filing of a notice of the interest of the lien holder as required under this Act, a perfected security interest in fixtures shall have priority over the interest of a lien holder.
- (7) Where the security interest is a purchase money security interest given by the security giver before the goods become fixtures and a notice is filed before such goods become fixtures or within five days after the date on which such goods becomes fixtures, a perfected security interest in fixtures shall have priority over the interest of the owner of immovable property, a lien holder or a mortgagee notwithstanding any provision in the mortgage deed.

Provided that the priority so determined shall not apply to a construction mortgage.

Explanation: For the purposes of this sub-section, the expression “construction mortgage” means a mortgage which is registered in accordance with the laws in force, and which secures any obligation to pay for any construction, improvement on immovable property.

- (8) In the event of default in discharge of a secured interest, a security holder who has priority under this section may remove fixtures from immovable property, subject to the following matters being governed as follows:
- (a) A security holder that removes fixtures shall promptly reimburse any mortgagee other than the security giver for the cost of repair of any damage to the immovable property;
 - (b) The security holder shall reimburse such mortgagee or owner for any diminution in value caused by the absence of the goods removed or by any necessity for replacing such goods; and
 - (c) A person entitled to reimbursement may refuse to give permission to remove such fixtures until the security holder gives adequate assurance for the performance of the obligation to reimburse.

38. Crops:

Where immovable property in possession of a security giver or the interest of the security giver in such immovable property is registered in accordance with the laws in force, a perfected security interest in crops growing on such immovable property shall have priority over a conflicting interest of such owner or a mortgagee.

39. Accessions:

- (1) Where goods are physically united with other goods in such a manner that the identity of the original goods is not lost, such

goods shall be deemed to have been acceded to such original goods.

- (2) A security interest may also be created in an accession, and such security interest shall also continue in collateral that becomes an accession. If a security interest is perfected when the collateral becomes an accession, the security interest shall be deemed to have been perfected also in the case of the accession.
- (3) In the event of default in the discharge of secured obligation, a security holder may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.
- (4) A security holder that removes an accession shall make prompt reimbursement, as follows, to the holder, other than the security giver, of any interest in the whole or the other goods whose interest is superior to that of the security holder for the cost of repair of any physical loss of and damage to the whole:
 - (a) A security holder that removes accessions shall promptly reimburse any mortgagee other than the security giver for the cost of repair of any loss and damage to the immovable property.
 - (b) The security holder shall reimburse the security giver or other security holder for any diminution in value caused by the absence of the goods removed or by any necessity for replacing such goods.

- (c) A person entitled to reimbursement may refuse to give permission to remove such goods until the security holder gives adequate assurance for the performance of the obligation to reimburse.

40. Commingled goods:

- (1) Commingled goods shall be those goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

- (2) A security interest may not be created in commingled goods.

However, a security interest may be attached to a product or mass that results when goods become commingled goods.

- (3) Where collateral becomes commingled goods, a security interest shall be attached to the product or mass.

- (4) Where a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that is attached to the product or mass may be perfected despite that a notice is not filed. The priority of the security interest in the product or mass shall be measured from the time of perfection of the security interest in the collateral that became commingled.

- (5) Where more than one security interest is attached to the product or mass of commingled goods, priority shall be determined as follows:

- (a) A security interest that is perfected at the time when the collateral becomes commingled goods shall have priority over a security interest that is unperfected at the time when the collateral becomes commingled goods;
- (b) The first security interest attached to the product or mass shall have priority over the unperfected security interests; and
- (c) Where more than one security interest is perfected, the security interests shall rank equally in proportion to the value of the collateral at the time when it becomes commingled goods.

41. Purchase of secured sales contracts and instruments:

A purchaser of a secured sales contract or an instrument shall, in the following circumstances, have priority over a conflicting security interest in the secured sales contract or instrument and also over the proceeds of such contract or instrument:

- (a) Where, the purchaser in the ordinary course of business gives new value and takes possession of the secured sales contract or instrument; and
- (b) Where the secured sales contract or instrument does not indicate that it has been assigned to the person holding the conflicting security interest.

42. Assignment:

- (1) Any person may assign any or all of the person's rights in accounts, secured sales contracts, instruments and other intangible property. In making such assignment, the right in accounts, secured sales contracts, instruments and other intangible property may be assigned.
- (2) The terms of the agreement concluded between the obligor and the assignor shall also apply to the assignee.
- (3) Except as otherwise provided in this Section, it shall not be required to give any information to the obligor for the attachment, perfection or enforcement of a security interest arising from an assignment.
- (4) Where information of an assignment is required to be given to the obligor, such information shall be given in writing, and the information shall identify the rights assigned and be signed by the assignor or the assignee.
- (5) After being informed of an assignment, the obligor shall perform his or her obligation by making payment to the assignee and not the assignor. If so requested by the obligor, the assignee shall furnish timely and sufficient evidence that the assignment has been made. In the event of failure of the assignee to provide adequate evidence of assignment, the obligor may perform his or her obligation by paying the assignor even if the obligor has received a notice of assignment.

43. Restriction on sale or assignment:

An agreement between a security holder and a security giver shall not be enforceable if that agreement prohibits or restricts the sale or assignment of an account, lease or secured sales contract.

44. Future advances:

Where a perfected security interest secures an obligation by the security holder to make future advances, the rights of a lien holder shall have priority over the security interest with respect to advances made after the security holder has actual knowledge of the interest of the lien holder or after a period of twenty days after a notice of the interest of the lien holder is filed in the Registration Office, whichever occurs earlier.

45. Alteration in priority:

A person entitled to priority under this Act may agree to modify or forego such priority. The filing of a notice shall not be necessary with respect to such agreement.

Chapter - 5

Enforcement of Security Interest

46. Provisions relating to performance of obligations:

- (1) The parties to a security agreement may, by mutual consent, make necessary provisions on performance of obligations.
- (2) In the event of default in performance of obligations, the security holder shall have the following rights:

- (a) to take possession or control of the collateral as the security holder prefers even if the security agreement has no provision about possession or control;
 - (b) to sell and dispose of the collateral;
 - (c) to exercise such other rights and remedies as provided in this Act;
 - (d) to exercise such other rights and remedies as provided in the security agreement; and
 - (e) to exercise such rights and remedies as provided under the other laws in force.
- (3) The security holder may exercise any or all of its remedies simultaneously.
- (4) In the event of default in the performance of obligation, if the collateral is accounts or other intangible property, the security holder may proceed directly against the accounts or other intangible property, without judicial action, subject to the provisions contained in this Act in relation to the exercise of the right relating to assignment or collection.
- (5) In the event of default in the performance of obligation,

if the collateral is a document, the security holder may proceed as to the document and as to the goods covered by the document.

- (6) When a security holder obtains an order granting possession, the priority in the collateral shall be measured from the date of filing of the notice or the date of perfection of the security interest, whichever occurs earlier.
- (7) While selling collateral by virtue of the order of the competent authority or by way of public auction, the security holder may buy such collateral.

47. Collection right of security holder:

- (1) In the event of default in the performance of obligation, with respect to accounts, secured sales contracts or other rights to payment, the security holder may notify an obligor or other person who owes payment on any other right to payment to make payment to the security holder and also take control of any subsequent proceeds.
- (2) If the security interest secures a debt, the security holder shall pay the security giver any amount collected in excess of the secured debt, plus expenses allowed to be deducted under this Chapter. Except as otherwise agreed, if there is a deficiency in collection, the security giver owes to the security holder the difference between the amount collected and the secured debt plus expenses allowed to be deducted under this Chapter.

- (3) In the case of transaction relating to a sale of accounts or secured sales contracts, the security giver shall be entitled to any surplus and shall be liable for any deficiency only if the security agreement so provides.
- (4) The security holder may take action referred to in this Section without having recourse to court proceedings.

48. Right of security holder to take possession:

- (1) In the event of default in the performance of obligation, the security holder may take possession or control of collateral without legal proceedings if the security giver has consented in writing
- (2) In the event of default in the performance of obligation, the security holder may, by any order of the Court, take possession or control over the collateral. While issuing such order, the Court shall consider that such dispute is related with any one event of default in the performance of obligation and the security agreement covering the collateral.
- (3) The security giver may make an appeal to the Supreme Court against an order issued by the Court to dispossess the collateral from the security giver under this Section.
- (4) Subject to the security agreement, the security holder may require the security giver to assemble the collateral and make it available to the security holder at a place to be designated by the security holder which is reasonably convenient to both parties.

- (5) A security holder may render equipment unusable without removing it from its location and may dispose of collateral at the place of business or residence of the security giver or any other place where the collateral is situated or found.

49. Right available upon interference with enforcement action of collateral:

- (1) Where a security giver prevents or interferes with enforcement action of a security interest, sale and disposal of, or execution in any other manner of, collateral contrary to this Act, the security agreement or the laws in force, the security holder may, in the following circumstances, make an application to the Court for protecting the collateral:
 - (a) Where the collateral is or is likely to be damaged or wrongfully transferred; or
 - (b) Where the collateral cannot be found; or
 - (c) Where the security giver cannot be found.
- (2) In relation to an application made pursuant to sub-section (1), the Court may issue the following orders:
 - (a) Restraining the security giver or any other person having possession of collateral from selling and disposing of the collateral;
 - (b) Requiring the security giver or any other person having knowledge about the collateral to appear before the Court and provide information about the collateral;

- (c) Requiring the security giver to hand over possession of the collateral to the security holder;
- (d) Requiring any person who has taken the collateral with security interest pursuant to this Act to hand over possession of such collateral to the security holder.

50. Right of security holder to sell and dispose of collateral:

- (1) In the event of default in the performance of obligation, a security holder may sell, lease, license or otherwise sell and dispose of any or all of the collateral.
- (2) Collateral may be sold and disposed of publicly or privately under one or more than one contract.
- (3) Collateral may be sold and disposed of as a unit or in parcel and at any time and place and on any terms in a manner to be consistent with the security holder's duties under this Act.
- (4) The security holder shall give the security giver a reasonable notice of the time and place of any public sale or the time at which any private sale or other intended disposal of collateral is to be made except in cases where it is not practical to give such notice in view of the fact that the collateral is perishable or threatens to decline speedily in value.
- (5) The security holder may buy the collateral at any public or private sale.

51. Consequences of sale and disposal:

- (1) The proceeds of sale and disposal shall be applied to make payment in the following order:
 - (a) The reasonable expenses of retaking, holding, preparing for disposal and disposing of the collateral, including reasonable fees paid to legal practitioner and legal expenses incurred by the security holder;
 - (b) Debt secured by the security interest;
 - (c) Debt secured by any subordinate security interest in the collateral if a written demand is received before the distribution of the proceeds is completed and the holder of a subordinate security interest gives reasonable evidence of the interest.
- (2) The security holder shall account to the security giver for any surplus of the proceeds of sale of collateral and, unless otherwise agreed, the security giver shall be liable for any deficiency.
- (3) While disposing of collateral by a security holder after default in performance of obligation, the following provisions shall be followed:
 - (a) On the sale and disposal of collateral, the buyer who pays value in good faith shall acquire all rights in the collateral, the security interest or any subordinate security interest or the collateral without privilege; and
 - (b) If, while issuing a new ownership certificate to the purchaser for value, the office maintaining records of

ownership of the collateral so requests, the security holder shall submit to such office the authorization for the issuance of the new ownership certificate in the form of the order issued by the Court granting possession to the security holder or the written agreement of the security giver to surrender possession to the security holder in the event of default in the performance of obligation.

52. Suspension or retention of collateral:

- (1) A security holder may, in the event of default in performance of obligation, propose to retain or suspend the collateral in full or partial satisfaction of the secured obligation.
- (2) A proposal shall be made, pursuant to sub section (1), to the security giver and to any other security holder from whom the security holder has received a written claim of an interest in the collateral.
- (3) Where the security holder receives objection in writing from a person entitled to receive a notice under sub-section (2) within twenty one days after such notice was sent, the security holder shall sell and dispose of the collateral in accordance with the provisions contained in this Chapter.
- (4) If any objection is not received within the time referred to in sub-section (3), the security holder may retain or suspend the collateral in satisfaction of the security giver's obligation in accordance with the proposal referred to in sub-section (1).

53. Right of security giver to redeem collateral:

- (1) Unless otherwise agreed in writing, the security giver or any other security holder may, while satisfying all obligations secured by the collateral in the event of default in the performance of obligation, redeem the collateral by paying expenses reasonably incurred by the security holder in taking possession, holding, selling, or preparing for sale and disposal of, the collateral including reasonable fees paid to legal practitioner and other expenses incurred in legal action.
- (2) Redemption may be made before the security holder has disposed of the collateral or entered into a contract for its disposal or before the obligation has been discharged.

54. Obligation of security holder on default in performance of obligation:

- (1) Where the security holder fails to comply with the provisions of this Chapter, the Court may issue order allowing the disposal of collateral on such appropriate terms and conditions as specified by the Court or restraining the disposal.
- (2) In selling and disposing of collateral, the security holder shall sell and dispose of such collateral in a reasonable manner in consonance with commercial consideration.
- (3) After the completion of sale and disposal of collateral, the security giver or any person entitled to be informed or whose security interest has been made known to the security holder

prior to the sale and disposal shall have a right to recover from the security holder any loss caused to him or her by the failure to comply with the provisions of this Chapter.

- (4) A claim that a sale and disposal of collateral has not been made in a reasonable manner in consonance with commercial consideration shall not lie merely on the ground that a better price could have been obtained by a sale and disposal at a different time or in a different method from the time and method selected by the security holder.
- (5) A sale and disposal shall be deemed to have been made in a reasonable manner in consonance with commercial consideration if the security holder sells and disposes of the collateral in conformity with prevailing commercial practices among dealers in that type of the collateral.
- (6) If any specific method of sale and disposal of collateral has been approved in any legal proceeding, the disposal made in accordance with such method shall conclusively be deemed as a sale and disposal made in consonance with commercial consideration and in a reasonable manner.

Chapter - 6

Offences and Punishment

55. Offenses:

- (1) If any person does, or causes to be done, any of the following acts, such person shall be deemed to have committed an offense under this Act:

- (a) Knowingly making a false statement in a notice submitted to the Registration Office;
 - (b) Interfering with the filing of a notice pursuant to this Act; and
 - (c) Interfering with another person's right to use, possess, execute, retain or give security in property.
- (2) If the Registrar or his or her agent issues false certificates or falsifies or distorts any of records in the Registration Office, he or she shall be deemed to have committed the offense under this Act.
- (3) Any person who commits an offence under this Act shall be punished with a fine from fifty thousand rupees to five hundred thousand rupees or with imprisonment for a term not exceeding six months or with both, depending on the gravity of the offense.
- (4) If any person causes loss of or damage to collateral, whether negligently or recklessly, while the collateral is in his or her possession, such person shall be punished with a fine in proportion to the value of the collateral; and the aggrieved person may recover damages from the person who has caused such loss or damage negligently or recklessly.
- (5) A person who suffers loss or damage from the offense referred to in sub-section (2) shall have the right to recover damages.

56. To be state case:

- (1) The Government of Nepal shall be a plaintiff in a case punishable under this Act; and such case shall be deemed to be included in Schedule-1 of the Act Relating to State Cases, 2049.
- (2) At least a police inspector shall conduct investigations of and inquiries into offenses under this Act; and while conducting such investigations and inquiries, he or she may consult with any expert in the concerned field.

Chapter - 7

Transitional Provisions

57. Transactions executed prior to commencement of this Act:

- (1) The following provisions shall apply to any hypothecation agreements, pledge agreements, hire-purchase agreements or leases of goods as defined in this Act concluded prior to the commencement of this Act. For the purposes of this Section, such transactions shall be treated as prior transactions executed prior to the coming into force of this Act:
 - (a) Except as provided otherwise in clauses (b) and (c), the validity, effect and enforcement of such prior transaction shall be determined by reference to the laws in force when the agreement was executed;
 - (b) Where an interest created by any transaction executed prior to the commencement of this Act conflicts with a security interest created after the commencement of this

Act, the security interest created pursuant to this Act shall prevail to the extent of such conflict; and

(c) A security holder under a prior transaction may file a notice of the transaction within one year after the date of commencement of functions by the Registration Office, in accordance with the same manner as provided in Chapter 2 for a notice of a security interest. The priority of any perfection established by filing a notice under this Act shall be measured from the date of the establishment of the Registration Office.

(2) Notwithstanding anything contained elsewhere in this Act, where any transaction that falls within the jurisdiction of this Ordinance is concluded between the date of commencement of this Act and the time of the establishment and operation of the Registration Office, such transaction shall be deemed to have been done subject to sub-section (1).

Chapter - 8

Miscellaneous

58. Termination of security interest:

(1) A security interest shall be terminated when there is no outstanding secured obligation and the security holder has no commitment to make an advance, to incur an obligation, or otherwise to give value.

- (2) A security interest shall be terminated when, with respect to an account or secured sales contract that has been sold, the person owing the obligation has discharged such obligation.

59. Power to frame rules:

The Government of Nepal may frame necessary rules in order to implement the objective of this Act.

60. Effect of inoperativeness of the Secured Transactions Ordinance, 2062 (2005):

With the Secured Transactions Ordinance, 2062 (2005) being inoperative, unless a different intention appears, the inoperativeness shall not:

- (a) revive anything not in force or existing at the time at which the Ordinance became inoperative;
- (b) affect the matter in operation as per the Ordinance or anything duly done or any punishment suffered thereunder;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the Ordinance;
- (d) affect any penalty, punishment or forfeiture incurred under the Ordinance;
- (e) affect any action or remedy made or taken in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid; and any such legal proceeding or remedy may be

instituted, continued or enforced as if the Ordinance were in force.

Date of certification: 2063.7.30.5 (Thursday, 16 November 2006)

By order,

Dr. Kul Ratna Bhurtel

Secretary of the Government of Nepal