

SAINT LUCIA**No. 22 of 2022****ARRANGEMENT OF SECTIONS****PRELIMINARY***Section*

1. Short title and commencement
2. Interpretation
3. Application and non-application of this Act
4. Conflict of laws

PART I**CREATION OF A SECURITY INTEREST**

5. Security interest
6. Creation of a security interest
7. Obligations that may be secured
8. Movable property that may be encumbered
9. Requirements for security agreement
10. Description of encumbered property in security agreement
11. Security interest in identifiable proceeds
12. Security interest in goods commingled in a mass or product
13. Security interest in trade receivables
14. Security interest in receivables, other intangible property or negotiable instruments
15. Security interest in funds credited to a deposit account
16. Security interest in goods covered by a document of title
17. Security interest in goods used in intellectual property
18. Exemption of stamp duty on a security agreement

PART II**THIRD-PARTY EFFECTIVENESS OF A SECURITY INTEREST**

19. Third-party effectiveness of a security interest in encumbered property
20. Third-party effectiveness of a security interest in tangible property by possession
21. Third-party effectiveness of a security interest in proceeds
22. Third-party effectiveness of a security interest in a mass or product to which the security interest extends

23. Making a security interest effective against a third party by different methods
24. Lapse and re-establishment of third-party effectiveness
25. Third-party effectiveness on a change of the applicable law
26. Third-party effectiveness of an acquisition security interest in consumer goods
27. Third-party effectiveness of a security interest in funds credited to a deposit account
28. Third-party effectiveness of a security interest in goods covered by a document of title

PART III

REGISTRATION OF A SECURITY INTEREST IN MOVABLE PROPERTY

Division 1

Registration

29. Registration of an initial notice
30. Registration of an amendment notice
31. Registration of a cancellation notice
32. Registration of an amendment notice to change the name of the secured creditor
33. Authorization by the grantor
34. Registered notice dealing with one or multiple security agreements
35. Registration of an initial notice before creation of a security interest
36. Description of encumbered property in an initial notice or amendment notice
37. Identifier of grantor
38. Identifier of secured creditor
39. Period of effectiveness and extension of period of effectiveness
40. Mandatory registration of an amendment notice or a cancellation notice
41. Errors in required information
42. Post-registration change of identifier of grantor
43. Post-registration transfer of an encumbered property

Division 2

Establishment of a Register of Security Interests in Movable Property

44. Establishment of a Register of Security Interests in Movable Property
45. Functions of the Registrar of the High Court
46. Powers of the Registrar of the High Court
47. Delegation of functions and powers
48. Maintenance of the Register

49. Public inspection and search of the Register
50. Integrity of information
51. Removal of information from the Register and archive information

PART IV
PRIORITY OF A SECURITY INTEREST AS AGAINST
COMPETING CLAIMANTS

52. Priority amongst competing security interests created by the same grantor
53. Priority amongst competing security interests created by different grantors
54. Priority not affected by a change by which a security interest is effective against a third-party
55. Priority when one or both security interests is in proceeds
56. Priority of security interests in tangible property commingled in a mass or transformed in a product
57. Priority of the rights of a buyer or other transferee, lessee or licensee of encumbered property
58. Rights of a judgement creditor
59. Priority of an acquisition security interest
60. Priority amongst competing acquisition security interests
61. Acquisition security interests and the rights of a judgement creditor
62. Security interests in proceeds of movable property subject to an acquisition security interest
63. Acquisition security interest extending to a mass or product
64. Subordination
65. Priority with respect to future advances and future encumbered assets
66. Knowledge of existence of a security interest
67. Priority of a security interest in a negotiable instrument
68. Priority of a security interest in funds credited to a deposit account
69. Possession of money subject to a security interest
70. Priority of a security interest in tangible property covered by a document of title
71. Priority of a security interest in non-intermediated securities

PART V
RIGHTS AND OBLIGATIONS OF THE GRANTOR, SECURED
CREDITOR AND A THIRD-PARTY

72. Obligations of grantor and secured creditor
73. Grantor and secured creditor in possession to exercise reasonable care

- 74. Termination of security interest
- 75. Inspection of encumbered property
- 76. Secured creditor to provide information on request
- 77. Representations of grantor of security interest in receivables
- 78. Notification of security interest to debtor of receivables
- 79. Right of secured creditor to payment made with respect to receivables
- 80. Debtor not affected by creation of a security interest in receivables
- 81. Effectiveness of notification of a security interest in receivables
- 82. Discharge of a debtor of receivables
- 83. Defences and rights of set-off of a debtor of receivables
- 84. Agreement not to raise defences or rights of set-off
- 85. Modification of agreement giving rise to receivables
- 86. No recovery from secured creditor
- 87. Security interest in a negotiable instrument
- 88. Rights as against a financial institution
- 89. Rights as against an issuer of a document of title

PART VI
ENFORCEMENT OF A SECURITY INTEREST

- 90. Rights exercisable after default
- 91. Exercise of rights after default
- 92. Relief for non-compliance
- 93. Termination of enforcement and redemption of encumbered property
- 94. Secured creditor with priority to take over enforcement
- 95. Right of secured creditor to possession of encumbered property after default
- 96. Disposal of encumbered property
- 97. Distribution of proceeds of encumbered property
- 98. Proposal to acquire encumbered property in satisfaction of secured obligation
- 99. Rights acquired on disposition of encumbered property
- 100. Collection of payment by secured creditor
- 101. Collection of receivables by transferee of receivables
- 102. Priority and enforcement as against securities

PART VII
APPLICABLE LAW

- 103. Interpretation of this Part
- 104. Choice of law by grantor and secured creditor
- 105. Law applicable to a security interest in tangible property

106. Law applicable to a security interest in intangible property
107. Law applicable to a security interest in receivables relating to immovable property
108. Law applicable to enforcement of a security interest
109. Law applicable to a security interest in proceeds
110. Application of laws of Saint Lucia on grounds of public policy
111. Effect of commencement of insolvency proceedings
112. Law applicable to debtor, obligor, issuer and secured creditor
113. Law applicable to a security interest in funds credited to a deposit account
114. Law applicable to third-party effectiveness of a security interest in certain types of movable property by registration
115. Law applicable to a security interest in intellectual property rights
116. Law applicable to a security interest in non-intermediated securities

PART VIII
MISCELLANEOUS

117. Duty to act in good faith
118. Regulations
119. Repeal
120. Savings
121. Transitional

I Assent

[L.S.]

ERROL CHARLES,
Acting Governor-General.

November 9, 2022.

SAINT LUCIA

No. 22 of 2022

AN ACT to provide for the use of movable property as collateral for credit; the creation of a security interest in movable property and third-party effectiveness of a security interest; the establishment of an online Register of Security Interests in Movable Property and for the registration of a security interest in movable property; the rules for determining priority of a security interest as against competing claimants; the rights and obligations of a grantor, secured creditor and third-party obligor; the enforcement of a security interest, applicable laws and for related matters.

[14th November, 2022]

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

PRELIMINARY**Short title and commencement**

1.—(1) This Act may be cited as the Security Interest in Movable Property Act, 2022.

(2) This Act shall come into force on a date to be fixed by the Minister by Order published in the *Gazette*.

Interpretation**2.** In this Act —

“acquisition secured creditor” means a secured creditor that has an acquisition security interest;

“acquisition security interest” means —

(a) a security interest in tangible property;

(b) a security interest in intellectual property; or

(c) a security interest in the rights of a licensee under a licence of intellectual property,

which secures an obligation to pay an unpaid portion of the purchase price of the property, or other credit extended to enable the grantor to acquire an interest in the property to the extent that the credit is used for that purpose;

“amendment notice” means a notice registered under section 30;

“bank” has the meaning assigned under section 2(1) of the Banking Act, Cap. 12.01;

“banking business” has the meaning assigned under section 2(1) of the Banking Act, Cap. 12.01;

“business day” does not include a Saturday, Sunday or bank holiday;

“cancellation notice” means a notice registered under section 31;

“certificated non-intermediated securities” means a non-intermediated security represented by a certificate that —

- (a) provides that the person entitled to the securities is the person in possession of the certificate; or
- (b) identifies the person entitled to the securities;

“competing claimant” —

- (a) means a creditor of a grantor or another person with a right in an encumbered property that may be in competition with the right of a secured creditor in the same encumbered property;
- (b) includes —
 - (i) another secured creditor of the grantor that has a security interest in the same encumbered property,
 - (ii) another creditor of the grantor that has an interest in the same encumbered property,
 - (iii) the insolvency representative in insolvency proceedings under bankruptcy and insolvency law in respect of the grantor, and
 - (iv) a buyer or other transferee, lessee or licensee of the encumbered property;

“consumer goods” means goods primarily used or intended to be used by the grantor for household purposes;

“control agreement” in relation to a right to payment of funds credited to a deposit account, means an agreement in writing between a financial institution, the grantor and the secured creditor, according to which the financial institution agrees to follow an instruction from the secured creditor with respect to the payment of funds without further consent from the grantor;

“corporation” means a company formed or registered under the laws of Saint Lucia or an incorporated entity, wherever incorporated, that carries on business in Saint Lucia or that has property in Saint Lucia;

“credit institution” —

- (a) means —
 - (i) a business licensed under the Money Services Business Act, Cap. 12.22,
 - (ii) a credit union registered under the Co-operative Societies Act, Cap. 12.06, or
 - (iii) a business licensed under an enactment that engages in money-lending or granting credit facilities;
- (b) does not include a bank or licensed financial institution under the Banking Act, Cap. 12.01;

“debtor” —

- (a) means a person that owes payment or other performance of a secured obligation, whether or not that person is the grantor of the security interest for securing payment or performing the obligation;
- (b) includes a secondary obligor;

“debtor of receivables” —

- (a) means a person that owes payment of receivables that is subject to a security interest;
- (b) includes a secondary obligor;

“debtor of trade receivables” —

- (a) means a person that owes payment of trade receivables that is subject to a security interest;
- (b) includes a secondary obligor;

“default”—

- (a) means the failure of a debtor to pay or perform a secured obligation in accordance with its terms;
- (b) includes an event that constitutes a default under the terms of the security agreement;

“deposit account” means an account maintained by a financial institution to which funds may be credited or debited;

“document of title” means a warehouse receipt, bill of lading, or other record that embodies a right to delivery of tangible property and satisfies the requirements for negotiability;

“Eastern Caribbean Central Bank” means the bank established under Article 3 of the Agreement establishing the Eastern Caribbean Central Bank made on the 5th day of July, 1983 the text of which is set out in the Eastern Caribbean Central Bank Agreement Act, Cap. 19.07;

“encumbered property” means —

(a) movable property that is subject to a security interest;
and

(b) receivables that is the subject of a transfer;

“equipment” means tangible property, other than inventory or consumer goods, that are primarily used or intended to be used for business operations by the grantor;

“financial institution” means —

(a) a bank;

(b) a credit institution;

(c) an insurance company licensed under the Insurance Act, Cap. 12.08;

(d) an international insurance company licensed under the International Insurance Act, Cap. 12.15;

(e) an international bank registered under the International Banks Act, Cap. 12.17; or

(f) a licensed financial institution;

“former security interest” means a right created by an agreement entered into before the commencement of this Act that is a security interest within the meaning of this Act and to which this Act would have applied if in force when the right was created;

“future property” means movable property that does not exist or that the grantor does not have a right in or the power to encumber at the time the security agreement is concluded;

“grantor” means —

- (a) a person that creates a security interest to secure an obligation of that person or another person;
- (b) a buyer or other transferee, lessee, or licensee of an encumbered property that acquires a right subject to a security interest; and
- (c) a transferor in a transfer of receivables;

“immovable property” includes —

- (a) an emphyteutic lease;
- (b) land;

“initial notice” means a notice registered under section 29;

“intangible property”—

- (a) means movable property;
- (b) includes receivables, chose in action, deposit account, electronic securities and intellectual property rights;
- (c) does not include tangible property;

“intellectual property rights” means —

- (a) a copyright under the Copyright Act, Cap. 13.07;
- (b) a right to use a registered geographical indication under section 6 of the Geographical Indications Act, Cap. 13.14;
- (c) a right conferred by registration of an industrial design under section 5 of the Industrial Designs Act, Cap. 13.29;
- (d) a right conferred on a right holder as defined under section 2 of the Layout-Designs (Topographies) of Integrated Circuits Act, Cap. 13.16;
- (e) a trade mark under the Trade Marks Act, Cap. 13.30;
- (f) another right related to a right under paragraphs (a) to (e);

(g) a right similar to a right under paragraphs (a) to (e) created under the law of another State which is valid under the laws of Saint Lucia;

“inventory” means tangible property held by the grantor for sale or lease in the ordinary course of the business of the grantor, including raw material and work-in progress;

“judgement creditor” means a creditor that has obtained a lien in respect of movable property under a judgement or provisional order of the court;

“knowledge” means actual knowledge;

“licensed financial institution” has the meaning assigned under the Banking Act, Cap. 12.01;

“mass” means a tangible asset which results when a tangible asset is commingled with one or more other tangible assets of the same kind causing each tangible asset to lose its separate identity;

“Minister” means the Minister responsible for finance;

“money” means a bank note and coin issued by the Eastern Caribbean Central Bank and a note and coin authorized as legal tender by another country;

“movable property” —

(a) means tangible property or intangible property;

(b) does not include immovable property;

“negotiable instrument” means —

(a) a bill of exchange;

(b) a cheque;

(c) a promissory note;

(d) any other document recognized under the Commercial Code, Cap. 244 of the Revised Laws of Saint Lucia, 1957 as a promise for payment of a sum by a specific person;

“non-intermediated securities” does not include securities credited to a securities account and the resulting rights;

“notification of a security interest in receivables” means a notification by the grantor or the secured creditor under section 78, informing the debtor of receivables that is subject to a security interest;

“person” —

- (a) means an individual, a corporate body or an unincorporated body;
- (b) in relation to the registration of a security interest, includes a financial institution;

“possession” means the actual physical possession of tangible property by a person or the person’s representative, or by an independent person who acknowledges holding the tangible property for that person;

“priority” means the right of a person in encumbered property in preference to the right of a competing claimant;

“proceeds” —

- (a) means whatever is received in respect of encumbered property;
- (b) includes whatever is received as a result of the sale or other transfer, lease, licence or collection of encumbered property, natural fruits, insurance proceeds, a claim arising from defects in, damage to or loss of encumbered property, and proceeds of such proceeds;

“product” means tangible property which results when —

- (a) tangible property is physically associated or united with one or more other tangible properties of a different kind, and each tangible property loses its separate identity; or
- (b) one or more tangible properties are manufactured, assembled or processed, and each tangible property loses its separate identity;

“receivables” —

- (a) means a right to payment of a monetary obligation;
- (b) does not include a right to payment —
 - (i) evidenced by a negotiable instrument,
 - (ii) of funds credited to a deposit account, and
 - (iii) under a non-intermediated security;

“Register” means the Register of Security Interests in Movable Property under section 44;

“registered notice” means —

- (a) an initial notice;
- (b) an amendment notice; or
- (c) a cancellation notice;

“registration number” means a number assigned to an initial notice;

“Registry” means the Registry of the High Court;

“secondary obligor” includes —

- (a) in relation to a debtor, a guarantor of a secured obligation;
- (b) in relation to a debtor of receivables, a guarantor of a receivable;
- (c) in relation to a debtor of trade receivables, a guarantor for a trade receivable;

“secured creditor” —

- (a) means a person that has a security interest;
- (b) includes a transferee in a transfer of receivables;

“secured obligation” —

- (a) means an obligation secured by a security interest;
- (b) does not include the interest of a transferee in a transfer of a receivable;

“securities” has the meaning assigned under the Securities Act, Cap. 12.18;

“securities account” means an account maintained by an intermediary to which securities may be credited or debited;

“security agreement” means an agreement, regardless of whether the parties have denominated it as a security agreement, between a grantor and a secured creditor that provides for —

- (a) the creation of a security interest; and
- (b) the transfer of receivables;

“security interest” means a property interest in movable property, created under sections 6 to 17;

“signed” includes data in electronic form, affixed to or logically associated with an electronic communication, which may be used to identify the signatory in relation to the electronic communication and to indicate the approval of the signatory of the information contained in the electronic communication;

“tangible property” —

- (a) means goods in relation to —
 - (i) an acquisition security interest,
 - (ii) equipment,
 - (iii) inventory,
 - (iv) mass,
 - (v) product,
 - (vi) sections 12, 22, 56, 57, 59, 60, 61, 62, and 63;
- (b) includes goods, money, a negotiable instrument, a document of title and certificated non-intermediated securities;

“trade receivables” means —

(a) receivables arising from a contract for —

- (i) the supply or lease of goods or services, other than financial services,
 - (ii) construction works,
 - (iii) the sale or lease of immovable property, or
 - (iv) the sale, lease or licence of industrial or other intellectual property or of proprietary information;
- or

(b) receivables representing the payment obligation for a credit card transaction;

“transfer of receivables” means the absolute transfer of ownership of receivables from one person to another person by an agreement;

“uncertificated non-intermediated securities” means non-intermediated securities that are unrepresented by a certificate;

“writing” includes an electronic communication if it contains information that is accessible and usable for subsequent reference.

Application and non-application of this Act

3.—(1) Without prejudice to subsection (2) and section 9(2)(c), this Act applies to —

- (a) a transaction, regardless of its form or the manner in which it is denominated by the parties, that creates a security interest in movable property, including —
 - (i) a pledge,
 - (ii) a trust deed,
 - (iii) a trust receipt,
 - (iv) a debenture,
 - (v) a floating charge;

- (b) a conditional sale agreement and an agreement for the sale of goods on hire-purchase or by a bill of sale under which title or ownership remains in the seller until the purchase price is paid;
 - (c) a transfer of receivables by agreement.
- (2) This Act does not apply to —
- (a) a lien given under a law;
 - (b) a trust arising under an enactment;
 - (c) a transfer of an interest or claim in or under a policy of insurance or a superannuation fund, except the transfer of a right to money or other value that is payable as indemnity or compensation for loss of, or damage to, encumbered property;
 - (d) the creation or transfer of an interest in immovable property, including a hypothec, charge or lease of immovable property, other than —
 - (i) an interest in crops, or
 - (ii) an assignment of a right to payment under a hypothec, charge or lease, if the assignment does not convey or transfer the interest of the assignor in the immovable property;
 - (e) an assignment for the general benefit of the creditors;
 - (f) an assignment of accounts receivable made solely to facilitate the collection of accounts receivable for the assignor;
 - (g) an assignment of an unearned right to payment under a contract to an assignee who is to perform the obligations of the assignor under the contract;
 - (h) securities for which the Eastern Caribbean Central Bank acts as agent or depository under the Eastern Caribbean Central Bank Agreement Act, Cap.19.07 or another enactment;
 - (i) securities held in the Eastern Caribbean Central Securities Depository Limited licensed under the Securities Act, Cap.12.18;

- (j) a hypothec of a ship and a maritime lien;
- (k) the creation or transfer of an interest in present or future wages or another compensation for labour or personal services, other than fees for professional services; and
- (l) a transfer of receivables by agreement when a transfer is a part of a sale of the business out of which the receivable arose.

Conflict of laws

4. Where a conflict exists between this Act and any other statute or law of Saint Lucia, this Act prevails.

**PART I
CREATION OF A SECURITY INTEREST**

Security interest

5.—(1) A security interest secures payment or other performance of an obligation or is the property interest of a transferee in a transfer of receivables, regardless of —

- (a) the form of agreement or transaction;
- (b) whether or not the parties have denominated the interest as a security interest;
- (c) the type of moveable property;
- (d) the status of the grantor or secured creditor; or
- (e) the nature of the secured obligation.

(2) From the commencement of this Act, the ability to pledge or pawn movable property under Articles 1864 to 1867 of the Civil Code of Saint Lucia, Cap. 4.01 no longer exists.

Creation of a security interest

6. A security interest in movable property is created when a security agreement satisfies the requirements under sections 9 and 10, and the grantor has —

- (a) an interest in the property; or
- (b) the power to encumber the property.

Obligations that may be secured

7. A security interest may secure any type of obligation, present or future, determined or determinable, conditional or unconditional, fixed or fluctuating.

Movable property that may be encumbered

8. A security interest may encumber any type of movable property, including —

- (a) parts of movable property and undivided interests in movable property;
- (b) generic categories of movable property; and
- (c) all the movable property of a grantor.

Requirements for security agreement

9.—(1) A security agreement must —

- (a) be in writing and signed by the grantor;
- (b) identify the secured creditor and the grantor;
- (c) except in the case of an agreement that provides for the transfer of receivables, describe the secured obligation; and
- (d) describe the encumbered property in accordance with section 10.

(2) Notwithstanding subsection (1), a security agreement may —

- (a) be oral, if the secured creditor has possession of the encumbered property;
- (b) provide for —
 - (i) the creation of a security interest in future property and in such a case, the security interest in that property is created in accordance with section 6 at the time when the grantor acquires a right in property or the power to encumber the property, and
 - (ii) the appointment, rights, and duties of a receiver;

- (c) be made in accordance with the credit-sale agreement requirements under section 4 of the Consumer Credit Act, Cap. 13.15.

(3) Without prejudice to subsections (1) and (2) and sections 6, 73, 74, 91, Part VII and section 117, the parties may create a security interest in movable property.

(4) A security agreement under subsection (3) does not affect the rights or obligations of a person that is not a party to the security agreement.

Description of encumbered property in security agreement

10.—(1) A security agreement must describe the encumbered property in a manner that reasonably allows its identification.

(2) A description of the encumbered property must reasonably allow the identification of the encumbered property and the description does not have to be specific or identify each encumbered property individually.

(3) A description that indicates that the encumbered property consists of all the movable property of the grantor, or of all the movable property of the grantor within a generic category complies with subsection (2).

Security interest in identifiable proceeds

11.—(1) A security interest in an encumbered property extends to its identifiable proceeds.

(2) Subject to subsection (3), if proceeds in the form of funds credited to a deposit account or monies have commingled with other property of the same kind, the security interest extends to the commingled property and the value of the security interest in the commingled property is limited to the value of the proceeds immediately before being commingled.

(3) Where, after the commingling of funds credited to a deposit account or money, the value of the balance credited to the deposit account or of the commingled money is less than the value of the proceeds immediately before being commingled, the value of the security interest in the commingled property is limited to the lowest

value of the balance credited to the deposit account or of the commingled money between the time when the proceeds were commingled and the time the security interest in the proceeds is claimed.

Security interest in goods commingled in a mass or product

12.—(1) A security interest in goods commingled in a mass of movable properties of the same kind or are combined with other goods to creates a new product extends to the mass or product.

(2) In the case of a security interest that extends to a mass, the security interest is limited to the quantity of goods that were commingled.

Security interest in trade receivables

13.—(1) A security interest in trade receivables may be created by the grantor and is effective against the debtor of trade receivables under Part V despite an agreement between the debtor of trade receivables and the initial grantor or a subsequent grantor that limits the right or power of the initial or subsequent grantor to create a security interest in the trade receivables.

(2) Where an agreement under subsection (1) is breached by a grantor, this section does not affect an obligation or a liability of the grantor to the debtor of trade receivables for breach of that agreement, and the debtor of trade receivables may not —

- (a) avoid the contract giving rise to the trade receivables on the ground of the breach of that agreement; or
- (b) raise against the secured creditor a claim the debtor of receivables may have against the grantor as a result of the breach.

(3) A person that is not a party to an agreement under subsection (1) is not liable for the breach of the agreement by the grantor on the ground that the person had knowledge of the agreement.

Security interest in receivables, other intangible property or a negotiable instrument

14.—(1) A secured creditor with a security interest in receivables, a negotiable instrument, or other right to payment or performance,

has the benefit of a personal or property right that secures or supports payment or other performance of the encumbered property.

(2) This Act does not impose a requirement of a separate act of transfer of the personal or property right referred to under subsection (1).

(3) Where under another law, the personal or property right referred to under subsection (1) is transferable with a new act of transfer, the grantor shall transfer the benefit of that right to the secured creditor.

Security interest in funds credited to a deposit account

15.—(1) Notwithstanding an agreement between the grantor and a financial institution that limits the right of the grantor to create a security interest, a security interest in funds credited to a deposit account is effective.

(2) Notwithstanding subsection (1), a financial institution may pay the secured creditor or provide information about the deposit account to the secured creditor or a third party, if the financial institution agrees to do so.

Security interest in goods covered by a document of title

16. A security interest in a document of title extends to the goods covered by the document of title, if the issuer of the document of title is in possession of the goods at the time the security interest in the document of title is created.

Security interest in goods used in intellectual property

17. A security interest in goods with respect to which intellectual property is used does not extend to the intellectual property and a security interest in the intellectual property does not extend to the goods.

Exemption of stamp duty on a security agreement

18. A security agreement under this Act is exempt from stamp duties under the Stamp Duty Act, Cap. 15.11.

PART II
THIRD-PARTY EFFECTIVENESS OF
A SECURITY INTEREST

Third-party effectiveness of a security interest in encumbered property

19.—(1) Without prejudice to this Part, a security interest in encumbered property is effective against a third party by registering an initial notice.

(2) A security interest that is not effective against a third party is not effective against a competing claimant with rights in the same encumbered property.

Third-party effectiveness of a security interest in tangible property by possession

20. A security interest in tangible property is effective against a third party if the secured creditor has possession of the tangible property.

Third-party effectiveness of a security interest in proceeds

21. Where a security interest in movable property is effective against a third party, a security interest under section 11 in the proceeds of that property is effective against a third party —

- (a) without a further act, if the proceeds of that property are in the form of money, receivables, a negotiable instrument or funds credited to a deposit account;
- (b) in a case that is not referred to under paragraph (a) —
 - (i) for twenty days after the proceeds of that property arise, and
 - (ii) if, after the time period specified under subparagraph (i), the security interest in the proceeds of that property is made effective against a third party by one of the methods described under this Part.

Third-party effectiveness of a security interest in a mass or product to which the security interest extends

22. Where a security interest in tangible property is effective against a third party, a security interest in a mass or product to which

the security interest extends under section 12 is effective against a third party, without a further act.

Making a security interest effective against a third party by different methods

23.—(1) A security interest may be made effective against a third party by more than one method.

(2) When a security interest is made effective against a third party by more than one method, it is treated as being effective against a third party since the earliest of those methods, as long as there was no time when the security interest was not effective against a third party.

Lapse and re-establishment of third-party effectiveness

24. Where the third-party effectiveness of a security interest lapses, third-party effectiveness may be re-established and is effective from the time of its re-establishment.

Third-party effectiveness on a change of the applicable law

25.—(1) Where, under Part VII —

- (a) the law applicable to third-party effectiveness of a security interest in encumbered property is the law of another State;
- (b) the security interest is effective against a third party under the law of that other State; and
- (c) subsequently, the law of Saint Lucia becomes applicable to third-party effectiveness of the security interest, the effectiveness against a third party of the security interest —
 - (i) remains effective against a third party until the earlier of —
 - (A) the time when third-party effectiveness of the security interest would have lapsed under the law of the other State; or
 - (B) one hundred and twenty days after the law of Saint Lucia becomes applicable, and

- (ii) is, if after the time period specified under subparagraph (i) expires, effective against a third-party, if the security interest is made effective against a third party under this Act.

(2) Where a security interest is effective against a third party under the law of another State and remains effective against a third party under subsection (1)(ii), the time of third-party effectiveness is the time when it was achieved under the law of the other State.

Third-party effectiveness of an acquisition security interest in consumer goods

26. An acquisition security interest in consumer goods, other than a motor vehicle, is automatically effective against a third party on its creation, without a further act.

Third-party effectiveness of a security interest in funds credited to a deposit account

27. A security interest in funds credited to a deposit account is effective against a third party —

- (a) if the secured creditor is the financial institution at which the deposit account is maintained;
- (b) on the conclusion of a control agreement among the secured creditor, the financial institution at which the deposit account is maintained, and the grantor; or
- (c) on the secured creditor becoming the account holder with respect to the deposit account.

Third party effectiveness of a security interest in goods covered by a document of title

28.—(1) Where a security interest in a document of title is effective against a third party, the security interest that extends to the goods covered by the document of title under section 16 is effective against a third party.

(2) During the period when a document of title covers goods, a security interest in the goods may be made effective against a third party by the possession of the document of title by the secured creditor covering the goods.

(3) In a case referred to under subsection (2), the security interest remains effective against a third party for twenty days after the document of title or the goods covered by the document of title is returned to the grantor or other person for the purpose of dealing with the goods.

PART III
REGISTRATION OF A SECURITY INTEREST IN
MOVABLE PROPERTY

Division 1
Registration

Registration of an initial notice

29.—(1) Subject to this section, a person shall register a security interest in movable property electronically in the Register by an initial notice.

(2) Registration of an initial notice of a security interest in movable property of a grantor is ineffective, unless authorized by the grantor under section 33.

(3) An initial notice under subsection (1) must contain the following information —

- (a) a description of the encumbered property under section 36;
- (b) the identifier of the grantor under section 37;
- (c) the identifier of the secured creditor under section 38;
- (d) the address of the grantor;
- (e) the address of the secured creditor; and
- (f) any other prescribed information.

(4) On submission of an initial notice under this section, a person shall pay the prescribed fee and be issued a registration number.

(5) The registration number issued under subsection (4) must be used in associating the initial notice with a related amendment notice or cancellation notice.

Registration of an amendment notice

30.—(1) Subject to this section, the person identified in an initial notice as the secured creditor may register with the Registrar of the High Court an amendment notice relating to the initial notice.

(2) An amendment notice under subsection (1) may add encumbered properties, extend the period of effectiveness of an initial notice, add or eliminate a grantor, or change the secured creditor.

(3) Registration of an amendment notice under this section that —

(a) adds encumbered properties or extends the period of effectiveness of the registration of an initial notice is ineffective, unless authorized by the grantor under section 33;

(b) adds a grantor is ineffective, unless authorized by the additional grantor under section 33.

(4) On registration of an amendment notice under this section, a person shall pay the prescribed fee.

Registration of a cancellation notice

31. The person identified in an initial notice as the secured creditor may register with the Registrar of the High Court, a cancellation notice that relates to the initial notice.

Registration of an amendment notice to change the name of the secured creditor

32.—(1) After registering an amendment notice to change the name of a person identified in an initial notice as the secured creditor, the person identified in the amendment notice as the new secured creditor may register an amendment notice or cancellation notice.

(2) Registration of an amendment notice or cancellation notice after registration of an amendment notice under subsection (1) by a person other than the new secured creditor is ineffective.

Authorization by the grantor

33.—(1) Authorization by the grantor under section 29(2) and 30(3)(b) must be given in writing and may be given before or after the registration of an initial notice or amendment notice.

(2) Authorization by the grantor under subsection (1), may be given to the Registrar of the High Court by providing a written security agreement relating to the encumbered property in the security agreement.

(3) After authorization of the grantor is given to the Registrar of the High Court under section 29(2) or 30(3)(b), the Registrar of the High Court may not require further evidence of the existence of the authorization of the grantor for the registration of an initial notice or an amendment notice.

Registered notice dealing with one or multiple security agreements

34. A registered notice may relate to security interests created by the grantor in favor of the secured creditor under one or multiple security agreements.

Registration of an initial notice before creation of a security interest

35. An initial notice may be registered before the creation of a security interest or the conclusion of a security agreement to which the initial notice relates, if authorized by the grantor under section 33.

Description of encumbered property in an initial notice or amendment notice

36.—(1) A person shall describe the encumbered properties in an initial notice, or an amendment notice that amends the description of the encumbered properties or adds new encumbered properties in accordance with section 10.

(2) In the case of a motor vehicle, the description of an encumbered property must include the motor vehicle identification number.

Identifier of grantor

37. Where the grantor identified in an initial notice or an amendment notice —

(a) is an individual, the identifier of the grantor is —

(i) the identification number of the individual on a valid national identification card of the individual,

- (ii) the name of the individual as it appears on a valid passport of the individual, if the individual does not hold a valid national identification card,
 - (iii) the name of the individual as it appears on the driver's licence of the individual, if the individual does not hold a valid national identification card or passport, or
 - (iv) any other prescribed form of identification of the individual;
- (b) is a corporation or other legal person, the identifier of the grantor is —
- (i) in the case of a company under the Companies Act, Cap. 13.01, the registration number of the company as assigned by the Registrar of Companies, or
 - (ii) in the case of a corporation that is not a company under the Companies Act, Cap. 13.01, the name of the corporation as it appears in the document of incorporation or registration of that corporation;
- (c) subject to bankruptcy or insolvency proceedings, the identifier of the trustee, or another representative of the grantor; and
- (d) in the case of a deceased person, the identifier of the executor or administrator of the estate of the deceased person as it appears on the instrument of appointment.

Identifier of secured creditor

38. Where the person to be identified as the secured creditor in an initial notice or an amendment notice is changed, the identifier of a secured creditor is —

- (a) in the case of an individual, the name of the secured creditor as it appears on —
 - (i) the national insurance card of the individual,
 - (ii) if the individual does not hold a national insurance card, the passport of the individual,

- (iii) if the individual does not hold a national insurance card or passport, the driver's licence of the individual, or
- (iv) any other prescribed form of identification of the individual;
- (b) in the case of a corporation or other legal person, the name of the secured creditor as it appears in the document incorporating or registering that corporation;
- (c) if the grantor is subject to bankruptcy or insolvency proceedings, a trustee, or another representative of the corporation; and
- (d) in the case of a deceased person, the executor or administrator of the estate of the deceased person as appears on the instrument of appointment.

Period of effectiveness and extension of period of effectiveness

39.—(1) The registration of an initial notice, amendment notice, or cancellation notice is effective from the date and time when the information in the notice is entered in the Register.

(2) Subject to subsection (3), the registration of an initial notice is effective for five years or another prescribed period.

(3) A person who registered an initial notice may, within six months or another prescribed period before the expiry of an initial notice, register an amendment notice for the extension of the period of effectiveness.

(4) The registration of an amendment notice under subsection (3) may extend the period of effectiveness under subsection (2) for an additional period of five years, beginning from the time when the period of effectiveness under subsection (2) would have expired if the amendment notice had not been registered.

(5) A person who registered an initial notice may extend the period of effectiveness of the registration of an initial notice more than once.

Mandatory registration of an amendment notice or a cancellation notice

40.—(1) A secured creditor shall register an amendment notice deleting encumbered properties described in a registered notice if —

- (a) the grantor has not authorized the registered notice in relation to the properties and the secured creditor is informed by the grantor that the grantor will not authorize the registration;
- (b) the security agreement to which the registered notice relates has been revised to delete the properties from the security interest and the grantor has not authorized the registration of a registered notice covering the properties; or
- (c) the grantor authorized the registration of a registered notice covering the properties and the authorization has been withdrawn and the security agreement covering the properties has not been concluded.

(2) A secured creditor shall register a cancellation notice if —

- (a) the registration of the initial notice is —
 - (i) not authorized by the grantor and the secured creditor has been informed by the grantor that the registration is not authorized, or
 - (ii) authorized by the grantor and the authorization has been withdrawn and a security agreement has not been concluded; or
- (b) the security interest to which the initial notice relates has been extinguished.

(3) Where the conditions set out under subsection (1) or (2) have been met, the grantor may request the secured creditor in writing, reasonably identifying itself and the related initial notice or amendment notice, to register the amendment notice or cancellation notice and the secured creditor may not charge or accept a fee or expense for complying with the request of the grantor.

(4) Where a secured creditor does not comply with the request of the grantor made under subsection (3) within fifteen working days

after its receipt, the grantor may seek an order of the court for the registration of an amendment notice or a cancellation notice by the Registrar of the High Court.

(5) The registration of an amendment notice or cancellation notice in accordance with an order under subsection (4) is not effective until the Registrar of the High Court has given the secured creditor fourteen calendar days notice of an order for the amendment notice or cancellation notice.

Errors in required information

41.—(1) Where the identifier of the grantor entered in an initial notice or an amendment notice is incorrect or changes, the initial notice or amendment notice is ineffective, unless the information in the initial notice or amendment notice is retrievable by a search of the Register using the correct identifier of the grantor.

(2) An error in the identifier of the grantor that results in the initial notice or amendment notice being ineffective with respect to that grantor under subsection (1) does not result in the notice being ineffective with respect to other grantors correctly identified in the initial notice or amendment notice.

(3) An error in the information required to be entered in an initial notice or amendment notice, other than the identifier of the grantor, does not result in the initial notice or amendment notice being ineffective unless the error seriously misleads a person conducting a search.

(4) An error in the description of an encumbered property that results in the initial notice or amendment notice being ineffective with respect to the property under subsection (3) does not result in the initial notice or amendment notice being ineffective with respect to other encumbered properties sufficiently described in the initial notice or amendment notice.

(5) An error in the prescribed statistical information does not affect the effectiveness of a registered notice.

Post-registration change of identifier of grantor

42.—(1) Subject to subsections (2) and (3), third-party effectiveness and priority of a security interest that was made effective against a third party by registration of an initial notice or amendment notice

are not affected by a change in the identifier of the grantor after the initial notice or amendment notice is registered.

(2) Where the identifier of the grantor changes after an initial notice or amendment notice is registered, a competing security interest created by the grantor that is made effective against a third party after the change has priority over the security interest to which the initial notice or amendment notice relates, unless either the security interest to which the initial notice or amendment notice relates is made effective against a third party by a method other than registration of an initial notice or amendment notice disclosing the new identifier of the grantor is registered —

- (a) before the expiry of one hundred and twenty days after the change; or
- (b) after the expiry of the period under paragraph (a) but before the competing security interest is made effective against a third party.

(3) Where the identifier of the grantor changes after an initial notice or amendment notice is registered and the encumbered property is sold after the change, a buyer acquires rights free of the security interest to which the notice relates, unless either the security interest to which the registered notice relates is made effective against a third party by a method other than registration disclosing the new identifier of the grantor is registered —

- (a) before the expiry of the period under subsection (2)(a);
or
- (b) after the expiry of the period under subsection (2)(b), and before the buyer acquires an interest in the property.

(4) Subsections (2) and (3) do not apply if the information in the initial notice or amendment notice under subsection (1) is retrievable by a search using the new identifier of the grantor.

Post-registration transfer of an encumbered property

43. Third-party effectiveness and priority of a security interest in an encumbered property that is made effective against a third party by registration of an initial notice are not affected by a sale of the property after the initial notice is registered to a buyer that acquires rights subject to the security interest.

Division 2
Establishment of a Register of Security Interests
in Movable Property

Establishment of a Register of Security Interests in Movable Property

44. There is established a register of security interests in movable property to be known as the Register of Security Interests in Movable Property within the High Court of Justice.

Functions of the Registrar of the High Court

45. Without prejudice to the Supreme Court Act, Cap. 2.01, the functions of the Registrar of the High Court includes —

- (a) receiving —
 - (i) an initial notice,
 - (ii) an amendment notice,
 - (iii) a cancellation notice;
- (b) issuing a registration number for an initial notice;
- (c) keeping and maintaining a register of registered notices;
- (d) providing access to the public of registered notices.

Powers of the Registrar of the High Court

46. Without prejudice to the Supreme Court Act, Cap. 2.01, the Registrar of the High Court does not have the power —

- (a) to amend an entry in the Register;
- (b) to cancel an entry in the Register.

Delegation of functions and powers

47.—(1) The Registrar of the High Court may delegate a function or power that the Registrar of the High Court is authorized to exercise under this Act.

(2) The Registrar of the High Court is not authorized to delegate the power to delegate under subsection (1).

Maintenance of the Register

48.—(1) The Register must be maintained in an electronic records system and can be accessed by using the website provided by the Registrar of the High Court.

(2) The Register must be kept in the prescribed form and manner for the registration of information in relation to a security interest.

(3) Without limiting the generality of subsection (2), the Register must include —

(a) information relating to a security interest in —

(i) an initial notice,

(ii) an amendment notice,

(iii) a cancellation notice;

(b) the registration number issued under section 29(4);

(c) a notation of the date and time of the registered notice.

Public inspection and search of the Register

49.—(1) The Register must be available for public inspection.

(2) A person may conduct a search of the Register by using the identifier of the grantor or the registration number of the initial notice.

(3) A search under subsection (2) associates the initial notice with a related amendment notice and cancellation notice.

Integrity of information

50.—(1) Without prejudice to section 48, the Registrar of the High Court shall not amend or delete a registered notice.

(2) The Registrar of the High Court shall preserve information contained in the Register and reconstruct the information in the event of loss or damage.

(3) Where a registered notice is effected by a failure of the Registrar of the High Court to comply with this Part, the registered notice remains effective, except against a person who obtained an interest in the encumbered property covered by the registered notice by giving value on reasonable reliance on the information available from the Register.

Removal of information from the Register and archive information

51.—(1) The Registrar of the High Court shall remove information in a registered notice from the Register on the expiry of the period of effectiveness of the registration of a registered notice under section 39.

(2) The Registrar of the High Court shall archive information removed from the Register —

- (a) for ten years; and
- (b) in a manner that enables the information to be retrieved.

PART IV
PRIORITY OF A SECURITY INTEREST AS AGAINST
COMPETING CLAIMANTS

Priority amongst competing security interests created by the same grantor

52.—(1) Subject to sections 56, 59, 60, 62, 63 and 64, priority amongst competing security interests created by the same grantor in the same encumbered property —

- (a) as between security interests each of which was made effective against a third party by registration of an initial notice, is determined by the order of registration, without regard to the order of creation of the security interests;
- (b) as between security interests each of which were made effective against a third party other than by registration of an initial notice, is determined by the order of third-party effectiveness; and
- (c) as between a security interest that was made effective against a third party by registration of an initial notice and a security interest that was made effective against a third party other than by registration of an initial notice, is determined by the order of registration or third-party effectiveness, whichever occurs first for each of the security interests.

(2) Subject to section 43, priority amongst competing security interests created by different grantors in the same encumbered property is determined under subsection (1).

Priority amongst competing security interests created by different grantors

53. Subject to section 43, priority amongst competing security interests created by different grantors in the same encumbered property is determined under section 52.

Priority not affected by a change by which a security interest is effective against a third-party

54. The priority of a security interest under section 52 is not affected by a change in the method by which a security interest is made effective against a third party under Part II, if there is no time when the security interest is ineffective against a third party.

Priority when one or both security interests is in proceeds

55. For the purposes of section 52, if a security interest in proceeds of an encumbered property is effective against a third party under section 21, the priority of the security interest in the proceeds is determined by using the same time of registration or third-party effectiveness that would be used to determine the priority of the security interest in the encumbered property to which the proceeds relate.

Priority of security interests in tangible property commingled in a mass or transformed in a product

56.—(1) Where two or more security interests in the same tangible property extend to a mass or product under section 12 and each security interest is effective against a third party under section 22, the priority of each security interest in the mass or product is the same as the priority that each security interest in that tangible property had immediately before the tangible property was commingled in a mass or transformed in a product.

(2) Where more than one security interest extends to the same mass or product under section 12 and each was a security interest in a separate tangible property at the time of commingling or transforming,

the secured creditors may share in the mass or product according to the ratio that the obligation secured by each security interest bears to the sum of the obligations secured by all the security interests.

(3) For the purposes of subsection (2), the obligation secured by a security interest that extends to the mass or product is subject to a limitation on the security interest under section 12.

Priority of rights of a buyer or other transferee, lessee or licensee of encumbered property

57.—(1) Subject to this section, if an encumbered property is sold or transferred, leased or licensed while the security interest in that property is effective against a third party, the buyer, transferee, lessee or licensee acquires a right subject to the security interest.

(2) A buyer or another transferee of an encumbered property acquires a right free of the security interest if the secured creditor authorizes the sale or other transfer of the property free of the security interest.

(3) The rights of a lessee or licensee of an encumbered property are not affected by a security interest if the secured creditor authorizes the grantor to lease or licence the property unaffected by the security interest.

(4) A buyer of goods sold in the ordinary course of the business of the seller acquires a right free of the security interest, if, at the time of the conclusion of the sale agreement, the buyer does not have knowledge that the sale violates the right of the secured creditor under the security agreement between the seller and the secured creditor.

(5) The right of a lessee of goods leased in the ordinary course of the business of the lessor is not affected by the security interest, if, at the time of the conclusion of the lease agreement, the lessee does not have knowledge that the lease violates the right of the secured creditor under the security agreement between the lessor and the secured creditor.

(6) Subject to the rights of a secured creditor with a security interest in intellectual property under subsection (7), the rights of a non-exclusive licensee of an intangible encumbered property licensed in the ordinary course of the business of the licensor are not affected

by the security interest, if, at the time of the conclusion of the licence agreement, the licensee does not have knowledge that the licence violates the rights of the secured creditor under the security agreement between the licensor and the secured creditor.

(7) Subsection (6) does not affect the intellectual property rights that a secured creditor may have as an owner or licensor of intellectual property.

(8) Where a buyer or other transferee of a tangible encumbered property acquires rights free of a security interest, a subsequent buyer or another transferee also acquires rights free of that security interest.

(9) Where the rights of a lessee of a tangible encumbered property or a licensee of an intangible encumbered property are not affected by the security interest, the rights of a sub-lessee or sub-licensee are also unaffected by that security interest.

(10) A buyer acquires rights free of, and the rights of a lessee are not affected by, an acquisition security interest in consumer goods unless the security interest is made effective against third parties other than under section 26 before the buyer or lessee acquires rights in the goods.

Rights of a judgement creditor

58.—(1) Subject to section 61, the rights of a judgement creditor have priority over a security interest if, before the security interest is made effective against third parties, the judgement creditor has seized or levied on the encumbered property.

(2) Where a security interest is made effective against a third party before or at the same time the judgement creditor acquires a right in an encumbered property by seizing or levying on the encumbered property, the security interest has priority, and that priority is limited to the greater of the credit extended by the secured creditor —

- (a) before the secured creditor received a notification from the judgement creditor that the judgement creditor has taken steps under subsection (1) or within twenty days after the judgement creditor has seized or levied on the encumbered property; or

- (b) pursuant to an irrevocable commitment of the secured creditor to extend credit in a fixed amount or an amount to be fixed pursuant to a prescribed formula, if the commitment was made before the secured creditor received a notification from the judgement creditor that the judgement creditor had taken the steps under subsection (1).

Priority of an acquisition security interest

59.—(1) An acquisition security interest in equipment, or in intellectual property or the right of a licensee under a licence of intellectual property primarily used or intended to be used by the grantor in the operation of its business, has priority over a competing security interest created by the grantor that is not an acquisition security interest, if —

- (a) the secured creditor with an acquisition security interest is in possession of the equipment; or
- (b) a registered notice with respect to the acquisition security interest is in the Register before the expiry of twenty days after the grantor obtains possession of the equipment or the agreement for the sale or licence of the intellectual property to the grantor has been concluded.

(2) An acquisition security interest in inventory, or in intellectual property or the rights of a licensee under a licence of intellectual property held by the grantor for sale or licence in the ordinary course of the business of the grantor, has priority over a competing non-acquisition security interest created by the grantor, if —

- (a) the secured creditor with an acquisition security interest is in possession of the inventory; or
- (b) before the grantor obtains possession of the inventory or the agreement for the sale or licence of the intellectual property to the grantor has been concluded —
 - (i) a notice with respect to the acquisition security interest is registered in the Register, and

- (ii) a secured creditor that has a registered notice in the Register with respect to a non-acquisition security interest created by the grantor in movable property of the same kind receives a notification from the acquisition secured creditor stating that it has or intends to obtain an acquisition security interest in the movable property described in the notification and describes the movable property so as to reasonably allow its identification.

(3) An acquisition security interest in consumer goods, or in intellectual property or the rights of a licensee under a licence of intellectual property primarily used or intended to be used by the grantor for personal, family or household purposes, has priority over a competing non-acquisition security interest created by the grantor.

(4) A notification sent under subsection (2)(b)(ii) —

- (a) may cover acquisition security interests under multiple transactions between the same parties without the need to identify each transaction; and
- (b) is sufficient only for security interests in inventory of which the grantor obtains possession, or intellectual property or rights of a licensee under a licence of intellectual property held by the grantor for sale or licence in the ordinary course of the business of the grantor which the grantor acquires, not later than five years after the notification is received.

Priority amongst competing acquisition security interests

60.—(1) Subject to subsection (2), priority amongst competing acquisition security interests is determined under section 55.

(2) An acquisition security interest of a seller or lessor, or of a licensor of intellectual property that was made effective against third parties not later than the expiry of the period specified under section 59(1)(b), has priority over a competing acquisition security interest.

Acquisition security interests and the rights of a judgement creditor

61. An acquisition security interest that is made effective against third parties not later than the expiry of the period specified under

section 59(1)(b) has priority over the rights of a judgement creditor that would have priority under section 58.

Security interests in proceeds of movable property subject to an acquisition security interest

62.—(1) Subject to subsection (2), a security interest in proceeds of movable property that is the subject of an acquisition security interest has the same priority over a competing security interest that the acquisition security interest in the movable property from which the proceeds arose has under section 59.

(2) Where the proceeds arose from inventory, or from intellectual property or rights of a licensee under a licence of intellectual property held by the grantor for sale or licence in the ordinary course of the business of the grantor, the security interest in the proceeds has the same priority over a competing security interest that —

- (a) a non-acquisition security interest in a movable property of the same kind as the proceeds has under section 52 if the proceeds take the form of receivables, negotiable instrument, or a right to funds credited to a deposit account; and
- (b) the acquisition security interest in the movable property from which the proceeds arose has under section 59 if the proceeds take another form, and before the proceeds arose a secured creditor that has a registered notice in the Register with respect to a non-acquisition security interest created by the grantor in a movable property of the same kind as the proceeds receives a notification from the acquisition secured creditor stating that it has or intends to obtain a security interest in properties of that kind and describes the properties sufficiently to enable the properties to be identified.

Acquisition security interest extending to a mass or product

63. Subject to section 59, an acquisition security interest in tangible property that extends to a mass or product and is effective against third parties has priority over a non-acquisition security interest granted by the same grantor in the mass or product.

Subordination

64.—(1) A person may subordinate the priority of that person's rights under this Act in favor of an existing or future competing claimant without the need for the person whose rights benefit from the subordination to be a party to the subordination.

(2) Subordination does not affect the rights of competing claimants other than the person subordinating priority and the beneficiary of the subordination.

Priority with respect to future advances and future encumbered assets

65.—(1) Subject to the rights of a judgement creditor under section 58, the priority of a security interest as against competing claimants extends to all secured obligations, including obligations incurred after the security interest became effective against third parties.

(2) The priority of a security interest as against competing claimants covers encumbered properties described in a registered notice in the Register, whether acquired by the grantor or coming into existence before or after the time of registration.

Knowledge of existence of a security interest

66. Knowledge on the part of one secured creditor of the existence of a security interest of another secured creditor has no effect on the priority ranking of the security interests.

Priority of a security interest in a negotiable instrument

67.—(1) A security interest in a negotiable instrument that is made effective against a third party by possession of the instrument has priority over a security interest in the instrument that is made effective against a third party by a registered notice.

(2) A buyer or other consensual transferee of an encumbered negotiable instrument acquires rights free of a security interest that is made effective against a third party by a registered notice in the Register if the buyer or other consensual transferee —

- (a) qualifies as a holder in due course of the negotiable instrument; or

- (b) takes possession of the negotiable instrument and gives value without knowledge that the sale or other transfer is in violation of the rights of the secured creditor under the security agreement.

Priority of a security interest in funds credited to a deposit account

68.—(1) A security interest in funds credited to a deposit account that is made effective against a third party by the secured creditor becoming the account holder with respect to the deposit account has priority over a competing security interest that is made effective against a third party by another method.

(2) A security interest in funds credited to a deposit account with respect to which the secured creditor is the financial institution at which the account is maintained has priority over a competing security interest made effective against third parties by any method, except a security interest that is made effective against third parties by the secured creditor becoming the account holder with respect to the deposit account.

(3) A security interest in funds credited to a deposit account that is made effective against a third party, by a control agreement among the secured creditor, the financial institution at which the deposit account is maintained and the grantor, has priority over a competing security interest, except —

- (a) a security interest of the financial institution at which the account is maintained; or
- (b) a security interest that is made effective against a third party by the secured creditor becoming the account holder with respect to the deposit account.

(4) The priority among competing security interests in funds credited to a deposit account that are made effective against third parties by the conclusion of control agreements is determined by the order in which the control agreements were entered into.

(5) The right of a financial institution under another law to set-off obligations owed to it by the grantor against the right of the grantor to payment of funds credited to a deposit account maintained with the financial institution has priority as against a security interest in

the right to payment of funds credited to the deposit account, except a security interest that is made effective against third parties by the secured creditor becoming the account holder.

(6) A transferee of funds from a deposit account pursuant to a transfer initiated or authorized by the grantor acquires his, her or its rights free of a security interest in funds credited to the deposit account, unless the transferee has knowledge that the transfer violates the rights of the secured creditor under the security agreement.

Possession of money subject to a security interest

69. A transferee that obtains possession of money that is subject to a security interest acquires rights free of the security interest, unless the transferee has knowledge that the transfer violates the rights of the secured creditor under a security agreement.

Priority of a security interest in tangible property covered by a document of title

70.—(1) Subject to subsection (2), a security interest in tangible property made effective against third parties by possession of the document of title covering that tangible property has priority over a competing security interest made effective against a third party by another method under this Act.

(2) Subsection (1) does not apply to a security interest in tangible property other than inventory if the security interest of the secured creditor not in possession of the document of title is effective against a third party before the earlier of —

- (a) the time that the tangible property became covered by the document of title; and
- (b) the time of conclusion of a security agreement between the grantor and the secured creditor in possession of the document of title providing for the property to be covered by a document of title if the property became so covered within twenty days from the date of the agreement.

(3) A transferee of an encumbered document of title that obtains possession of the document acquires rights free of a security interest in the document of title and the tangible property covered by that

encumbered document of title is made effective against a third party by another method under this Act.

Priority of a security interest in non-intermediated securities

71.—(1) A security interest in certificated non-intermediated securities made effective against a third party, by possession by the secured creditor of the certificate, has priority over a competing security interest created by the same grantor in the same securities made effective against a third party by a registered notice.

(2) A security interest in uncertificated non-intermediated securities made effective against a third party —

(a) by a notation of the security interest or entry of the name of the secured creditor as the holder of the securities in the books maintained for that purpose by or on behalf of the issuer has priority over a security interest in the same securities made effective against a third party under this Act;

(b) by the conclusion of a control agreement, has priority over a security interest in the same securities made effective against a third party by a registered notice.

(3) The order of priority among competing security interests in uncertificated non-intermediated securities made effective against a third party by the conclusion of control agreements is determined on the basis of the time of conclusion of the control agreements.

(4) This section does not adversely affect the rights of a protected holder of non-intermediated securities under the Securities Act, Cap. 12.18.

PART V
RIGHTS AND OBLIGATIONS OF THE GRANTOR, SECURED
CREDITOR AND A THIRD-PARTY

Obligations of grantor and secured creditor

72.—(1) The rights and obligations of the grantor and the secured creditor arising from the security agreement are determined by that agreement.

(2) The grantor and the secured creditor are bound by the usages to which the grantor and the secured creditor have agreed and, unless otherwise agreed, by practice established between the grantor and the secured creditor.

Grantor and secured creditor in possession to exercise reasonable care

73.—(1) A grantor or secured creditor in possession of an encumbered property shall exercise reasonable care to preserve the property and its value.

(2) A secured creditor shall be reimbursed by the grantor for reasonable expenses incurred for the preservation of the encumbered property.

Termination of security interest

74. On the termination of a security interest in an encumbered property as specified in the security agreement, the secured creditor in possession must —

- (a) return the property to the grantor; or
- (b) deliver the property to the person designated by the grantor.

Inspection of encumbered property

75. A secured creditor may inspect an encumbered property in the possession of the grantor or another person.

Secured creditor to provide information on request

76.—(1) Within twenty days after receipt of a written request by a grantor, a secured creditor other than a transferee under a transfer of receivables shall send to the grantor at the address specified in the request —

- (a) a statement of the obligation secured; and
- (b) a description of the encumbered properties.

(2) A grantor may obtain, without charge, one response to a request during each twenty-day period.

(3) The secured creditor may require payment of a charge not exceeding the prescribed amount for each additional response.

Representations of grantor of security interest in receivables

77. At the conclusion of a security agreement that creates a security interest in receivables —

- (a) the grantor represents that —
 - (i) the grantor has not previously created a security interest or other encumbrance in the receivable in favor of another secured creditor or another party, and
 - (ii) the debtor of receivables may not have a defence or right of set-off; but
- (b) the grantor does not represent that the debtor of receivables may have, the ability to pay.

Notification of security interest to debtor of receivables

78.—(1) A grantor or secured creditor may give the debtor of receivables notification of the security interest and a payment instruction, and after notification of the security interest has been received by the debtor of receivables, the secured creditor may send a payment instruction.

(2) Notification of a security interest or of a payment instruction sent in breach of an agreement between the grantor and the secured creditor is not ineffective for the purposes of section 82, and this section does not affect an obligation or a liability of the party in breach for damages arising as a result of the breach.

Right of secured creditor to payment made with respect to receivables

79.—(1) A grantor of a security interest in receivables and the secured creditor, whether or not notification of the security interest has been sent to the debtor of receivables, if payment with respect to the receivables is made —

- (a) to the secured creditor, the secured creditor may retain any payments with respect to the receivables that are made to the secured creditor, and any tangible property returned with respect to the receivables;

- (b) to the grantor, whether in a deposit account controlled by the secured creditor or another person, the secured creditor may retain the proceeds of any payments with respect to the receivables that are made to the grantor and any property returned to the grantor with respect to the receivables; and
- (c) to another person over whom the secured creditor has priority, the secured creditor may retain the proceeds of any payments with respect to the receivables that are made to that person.

(2) Except in the case of a transfer of receivables, the secured creditor may not retain more than the value of the obligation secured by the receivables.

Debtor not affected by creation of a security interest in receivables

80.—(1) Except as otherwise provided under this Act, the creation of a security interest in receivables does not, without the consent of the debtor of receivables, affect the rights and obligations of the debtor of receivables, including the payment terms contained in the agreement giving rise to the receivable.

(2) A payment instruction may change the person, address or account to which the debtor of the receivable is required to make payment, and may not change —

- (a) the currency of payment specified in the agreement giving rise to the receivable; or
- (b) the State in which payment is to be made, other than to a State in which the debtor of the receivable is located.

Effectiveness of notification of security interest in receivables

81.—(1) A notification of a security interest in receivables or a payment instruction is effective when received by the debtor of receivables, if it reasonably identifies the encumbered receivables and the secured creditor and is in a language that is reasonably expected to inform the debtor of receivables about its contents.

(2) It is sufficient if a notification of the security interest or a payment instruction is in the language of the contract giving rise to the receivable.

(3) Encumbered receivables covered in a notification or payment instruction may include receivables that arise after notification.

Discharge of a debtor of receivables

82.—(1) Until the debtor of receivables receives notification of a security interest in receivables, the debtor is discharged from the obligation on the receivable by paying in accordance with the agreement giving rise to the receivable.

(2) After the debtor of receivables receives notification of a security interest in receivables, subject to subsections (3) to (7), the debtor is discharged only by paying the secured creditor or, if otherwise instructed in the notification or subsequently by the secured creditor in a writing received by the debtor of the receivable, in accordance with that payment instruction.

(3) Where the debtor of receivables receives more than one payment instruction relating to a single security interest in the same receivable created by the same grantor, the debtor is discharged by paying in accordance with the last payment instruction received from the secured creditor before payment.

(4) Where the debtor of receivables receives notification —

- (a) of more than one security interest in the same receivable created by the same grantor, the debtor is discharged by paying in accordance with the first notification received;
- (b) of more than one security interest in the same receivable created by different grantors, whether it is the initial grantor or a secured creditor that grants a security interest in the receivable to a subsequent secured creditor, the debtor is discharged by paying in accordance with the notification of the last of the security interests;
- (c) of a security interest in a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or by paying in accordance with this section as if the debtor of receivables had not received the notification;

- (d) under paragraph (c) and pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid;
- (e) of a security interest in the receivable from the secured creditor, the debtor of receivables may request the secured creditor to provide —
 - (i) within a reasonable period of time, adequate proof of the security interest, and
 - (ii) if the security interest is created in favour of a secured creditor by the initial or another secured creditor —
 - (A) adequate proof of the security interest created by the initial grantor in favour of the initial secured creditor; and
 - (B) of an intermediate security interest.

(5) Until the secured creditor complies with a request under subsection (4)(e), the debtor of receivables is discharged by paying the grantor in accordance with this section as if the debtor had not received notification of the security interest.

(6) Adequate proof of a security interest under subsection (4)(e) includes a written communication from the grantor which indicates that a security interest has been created.

(7) This section does not affect another ground on which payment by the debtor of receivables to the person entitled to payment or authorized to receive payment discharges the debtor of receivables.

Defences and rights of set-off of a debtor of receivables

83.—(1) Unless agreed under section 84, in a claim by the secured creditor against the debtor of receivables for payment of the encumbered receivable, the debtor of receivables may raise against the secured creditor —

- (a) in the case of receivables arising from an agreement, all defences and rights of set-off arising from the agreement giving rise to the receivable or another agreement that was part of the same transaction, and

that the debtor of receivables may raise if the security interest had not been created and the claim were made by the grantor; and

- (b) any other right of set-off that is available to the debtor of receivables at the time the debtor received notification of the security interest.

(2) Notwithstanding subsection (1), the debtor of receivables may not raise as a defence or right of set-off against the secured creditor a breach of an agreement under section 13(2) limiting the right of the grantor to create the security interest.

Agreement not to raise defences or rights of set-off

84.—(1) Subject to subsection (3), the debtor of receivables may agree with the grantor in a written document signed by the debtor of receivables not to raise against the secured creditor the defences and rights of set-off that it may raise under section 83.

(2) An agreement under subsection (1) may be modified by an agreement in writing signed by the debtor of receivables and the effectiveness of that modification against the secured creditor is determined under section 85.

(3) The debtor of receivables may not waive a defence arising from a fraudulent act on the part of the secured creditor or based on the incapacity of the debtor of receivables.

Modification of agreement giving rise to receivables

85.—(1) Where receivables arose by agreement between the grantor and the debtor of receivables and the parties modify that agreement, the modification is effective against the secured creditor, and the secured creditor acquires corresponding rights under the modified agreement, if the modification was concluded before notification of the security interest in the receivable.

(2) Where a modification under subsection (1) is concluded after notification of the security interest in the receivable, the modification is ineffective against the secured creditor unless —

- (a) the secured creditor consents to it; or

- (b) at the time of the agreement, the receivable was not fully earned by performance, and —
 - (i) the modification is provided for in the agreement giving rise to the receivable, or
 - (ii) in the context of that agreement, a secured creditor consents to the modification.

(3) Subsections (1) and (2) do not affect a right of the grantor or the secured creditor arising from breach of an agreement between the grantor and the secured creditor.

No recovery from secured creditor

86. A debtor of receivables shall not recover from a secured creditor if the grantor of the security interest fails to perform an obligation under an agreement giving rise to the receivables.

Security interest in a negotiable instrument

87. The rights of a secured creditor that has a security interest in a negotiable instrument as against a person obligated on the negotiable instrument are determined by Title VII on Bills of Exchange of the Commercial Code, Cap. 244 of the Revised Laws of Saint Lucia, 1957.

Rights as against a financial institution

88.—(1) The creation of a security interest in funds credited to a deposit account maintained with a financial institution does not —

- (a) affect the rights and obligations of the financial institution without the consent of the financial institution; or
- (b) authorize the financial institution to provide information about the deposit account to a third party.

(2) Unless agreed, a right of set-off that a financial institution with which a deposit account is maintained may have is not affected by a security interest that the financial institution may have in funds credited to that deposit account.

Rights as against an issuer of a document of title

89. The rights of a secured creditor that has a security interest in a document of title as against the issuer of the document of title or another person specified in the document of title are determined in accordance with the law applicable to that document of title.

PART VI
ENFORCEMENT OF A SECURITY INTEREST

Rights exercisable after default

90.—(1) After default, the grantor and the secured creditor may —

- (a) exercise any right under this Part; or
- (b) exercise any right provided in the security agreement.

(2) The exercise of a right after default does not prevent the exercise of another right after default, except to the extent that the exercise of a right makes the exercise of another right impossible.

(3) Before default, a grantor or debtor may not waive or vary, by agreement, any of its rights under this Part.

Exercise of rights after default

91.—(1) A secured creditor may exercise rights after default, with or without making an application to the court, in accordance with this Act.

(2) The exercise of the rights of a secured creditor after default without making an application to the court is determined under this Part.

(3) A dispute with respect to rights after default may be submitted to arbitration, mediation or other processes of alternative dispute resolution, by agreement of the parties.

Relief for non-compliance

92. Where a secured creditor does not comply with this Part, the grantor, another person with a right in the encumbered property, or the debtor may seek relief by making an application to the court.

Termination of enforcement and redemption of encumbered property

93.—(1) The grantor, another person with a right in the encumbered property, or the debtor may terminate the secured creditor's exercise of its rights after default and redeem the encumbered property by paying or performing the secured obligation in full, including the reasonable cost of enforcement.

(2) The right to terminate the secured creditor's exercise of rights after default and to redeem the encumbered property may be exercised, until the earlier of —

- (a) the sale or other disposition or the collection of the encumbered property by the secured creditor; and
- (b) the conclusion of an agreement by the secured creditor for the sale or other disposition of the encumbered property.

Secured creditor with priority to take over enforcement

94.—(1) Notwithstanding the commencement of another secured creditor's exercise of rights after default, a secured creditor whose security interest has priority over that of the other secured creditor may take over enforcement before the earlier of —

- (a) the sale or other disposition, acquisition or collection of an encumbered property by the secured creditor enforcing the security interest; or
- (b) the conclusion of an agreement by the secured creditor enforcing the sale or other disposition of an encumbered property.

(2) The right of the secured creditor with priority to take over the enforcement process includes the right to enforce under section 90.

Right of secured creditor to possession of encumbered property after default

95.—(1) Subject to the rights of a person, including a lessee or licensee, with a superior right to possession, a secured creditor may obtain possession of an encumbered property after default —

- (a) by making an application to the court; or
- (b) without making an application to the court, subject to subsection (2).

(2) A secured creditor may exercise the right under subsection (1), without making an application to the court, if —

- (a) in the security agreement, the grantor has consented in writing to the secured creditor obtaining possession after default without making an application to the court;
- (b) the secured creditor has given the grantor and a person in possession of the encumbered property notification of default and of the intent of the secured creditor to obtain possession; and
- (c) at the time the secured creditor attempts to obtain possession of the encumbered property, the person in possession of the encumbered property does not object in such a manner that continuing the attempt to obtain possession of the encumbered property would be likely to lead to an immediate loss of public order and tranquility.

(3) The notification of default and intent to obtain possession under subsection (2)(b) may not be given if the encumbered property is perishable or declines in value quickly.

(4) Where a secured creditor whose security interest has priority over the security interest of another secured creditor is in possession of the encumbered property, the secured creditor whose security interest does not have priority may not obtain possession of the property.

Disposal of encumbered property

96.—(1) After default, a secured creditor may sell or dispose of, lease or licence the encumbered property —

- (a) by making an application to the court; or
- (b) without making an application to the court, subject to subsection (2).

(2) Where a secured creditor decides to sell or dispose of, lease or licence the encumbered property without making an application to the court, the secured creditor may select the manner, time, place and other aspects of the sale or other disposition, lease or licence, including whether to sell or dispose of, lease or licence encumbered properties individually, in groups or as a whole.

(3) The sale or other disposition of the encumbered property must be at a reasonable market value or in a commercially reasonable manner having regard to the condition of the encumbered property.

(4) A secured creditor may buy encumbered property —

- (a) at a public auction; or
- (b) at a private auction if the encumbered property is of a kind that is customarily sold on a market that is generally accepted by the public to conduct a sale.

(5) Where a secured creditor sells or disposes of, leases or obtains a licence with respect to the encumbered property under subsection (1) without making an application to the court, the secured creditor shall give notification of that intention to —

- (a) the grantor and the debtor;
- (b) a person with a right in the encumbered property that informs the secured creditor of that right in writing at least fifteen working days before the notification is sent to the grantor;
- (c) another secured creditor that —
 - (i) a registered notice with respect to a security interest in the encumbered property at least fifteen working days before the notification is sent to the grantor, or
 - (ii) was in possession of the encumbered property when the secured creditor enforcing the security interest took possession.

(6) The notification of the secured creditor's intention under subsection (5) must be sent at least fifteen working days before the sale or other disposition, lease or licence is effected and must contain —

- (a) a description of the encumbered properties;
- (b) a statement of the amount required at the time the notification is given to satisfy the secured obligation, including interest and the reasonable cost of enforcement;
- (c) a statement on the manner of the intended disposition;
- (d) a statement that the grantor, another person with a right in the encumbered property or the debtor may terminate the enforcement under section 93; and

(e) a statement of the date after which the encumbered property may be sold or disposed of, leased or licensed, or, in the case of a public disposition, the time, place and manner of the intended disposition.

(7) A notification under subsection (5) must be in a language that is reasonably expected to inform the recipient about its content.

(8) A notification to the grantor under subsection (5) complies with that subsection if it is in the language of the security agreement.

(9) A notification under subsection (5) may not be given if the encumbered property perishes before the end of the fifteen business days after the secured creditor obtains possession, declines in value quickly or is of a kind sold on a market that is generally accepted by the public to conduct a sale.

Distribution of proceeds of encumbered property

97.—(1) Where a secured creditor exercises the right under section 93 by making an application to the court, the distribution of the proceeds of sale or other disposition of, lease or licence of an encumbered property is determined by the Civil Code, Cap. 4.01, Code of Civil Procedure, Cap. 243 of the Revised Laws of Saint Lucia, 1957 and the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000 and in accordance with this Act on priority.

(2) Where a secured creditor exercises the right under section 94 without making an application to the court, the secured creditor that is enforcing a security interest —

(a) shall apply the proceeds of enforcement to the secured obligation after deducting the reasonable cost of enforcement, such as repossessing, holding, preparing for disposition, processing, and disposing of the encumbered property;

(b) whether or not there is a dispute as to the entitlement or priority of a competing claimant under this Act, may pay the surplus to an authorized person or deliver it to a judicial sequestrator pursuant to Article 1723 of the Civil Code, Cap. 4.01, for distribution in accordance with this Act on priority.

(3) Without prejudice to subsection (2)(b), the secured creditor that is enforcing a security interest shall pay the surplus remaining to a subordinate competing claimant that, prior to a distribution of the surplus, notified the secured creditor enforcing the security interest of the subordinate claimant's claim, to the extent of the amount of that claim, and remit the balance remaining to the grantor.

(4) A debtor remains liable for an amount owing after application of the net proceeds of enforcement to the secured obligation.

Proposal to acquire encumbered property in satisfaction of a secured obligation

98.—(1) After default, a secured creditor may make a proposal in writing to acquire one or more of the encumbered properties in total or partial satisfaction of the secured obligation.

(2) A secured creditor shall send the proposal under subsection (1) to —

- (a) the grantor and the debtor;
- (b) each person with an interest in the encumbered property that has notified the secured creditor in writing of that interest, at least fifteen business days before the proposal under subsection (1) is sent to the grantor;
- (c) each other secured creditor —
 - (i) that registered a notice with respect to a security interest in the encumbered property at least fifteen business days before the proposal under subsection (1) is sent to the grantor, and
 - (ii) in possession of the encumbered property when the secured creditor took possession.

(3) In the proposal under subsection (1), the secured creditor shall include a statement —

- (a) identifying the secured creditor and grantor and the encumbered properties that the secured creditor intends to acquire;

- (b) indicating the amount owed, at the date the proposal under subsection (1) is sent, to satisfy the secured obligation, including —
 - (i) interest,
 - (ii) the reasonable cost of enforcement, and
 - (iii) the amount of the secured obligation to be satisfied;
 - (c) indicating whether the secured creditor intends to acquire the encumbered property described in the proposal under subsection (1) in total or as partial satisfaction of the secured obligation and, in the latter case, the amount of the obligation that is proposed to be satisfied by acquiring the encumbered property;
 - (d) indicating that the grantor, another person with an interest in the encumbered property or the debtor may terminate the enforcement or redeem the encumbered property as provided under section 93; and
 - (e) indicating the date after which the encumbered property may be acquired by the secured creditor.
- (4) A secured creditor that makes a proposal under subsection (1) for the acquisition of an encumbered property —
- (a) in full satisfaction of the secured obligation, acquires the encumbered property, unless the secured creditor receives an objection in writing from a person who receives the proposal under subsection (2) within fifteen working days after the proposal is sent to that person;
 - (b) in partial satisfaction of the secured obligation, acquires the encumbered property if the secured creditor receives the consent in writing of a person who receives the proposal under subsection (2) within fifteen working days after the proposal is sent to each person entitled to receive the proposal.
- (5) A grantor may request the secured creditor to make a proposal under subsection (1) and, if the secured creditor accepts the request of the grantor, the secured creditor shall proceed as provided under subsections (2), (3) and (4).

Rights acquired on disposition of encumbered property**99.** Where a secured creditor —

- (a) sells or disposes of an encumbered property, the buyer or other transferee acquires the right of the grantor in the property free of the rights of the secured creditor enforcing the security interest and each competing claimant except the rights that have priority over the security interest of the secured creditor enforcing the security interest;
- (b) leases or licenses an encumbered property, the lessee or licensee may benefit from the lease or licence during its term, except as against a creditor with a right that has priority over the right of the secured creditor enforcing the security interest;
- (c) sells or disposes of, leases or licenses the encumbered property and does so in violation of this Part, the buyer or other transferee, lessee or licensee of the encumbered property acquires the rights or benefits referred to under paragraphs (a) and (b) if the buyer or other transferee, lessee or licensee does not have knowledge of non-compliance with this Part that materially prejudiced the rights of the grantor or another person.

Collection of payment by secured creditor

100.—(1) After default, a secured creditor with a security interest in receivables, negotiable instrument or funds credited to a deposit account may collect payment from the —

- (a) debtor of receivables;
- (b) obligor under the negotiable instrument; or
- (c) financial institution maintaining the deposit account.

(2) A secured creditor may, with the consent of the grantor, exercise the right to collect under subsection (1) before the default.

(3) A secured creditor exercising the right to collect payment under subsection (1) or (2) may enforce a personal or property right that secures or supports payment of the encumbered property.

(4) Where a security interest in funds credited to a deposit account is made effective against a third party by a registered notice, the secured creditor may collect or enforce the security interest of the secured creditor pursuant to an order of the court, unless the financial institution agrees otherwise.

(5) The right of a secured creditor to collect under subsection (1) to (4) is subject to sections 80 to 89.

Collection of receivables by transferee of receivables

101.—(1) Subject to sections 80 to 89, in the case of a transfer of receivables by agreement, the transferee may collect the receivables after payment is due.

(2) A transferee exercising the right to collect under subsection (1) may enforce a personal or property right that secures or supports payment of the receivables.

Priority and enforcement as against securities

102. For the avoidance of doubt, nothing construed in this Act as to the priority, or an enforcement right applicable to a security interest under this Act may be applied to, or enforced against securities held through the Eastern Caribbean Central Securities Depository Limited licensed under the Securities Act, Cap. 12.18.

PART VII APPLICABLE LAWS

Interpretation of this Part

103.—(1) For the purposes of this Part, “location” in relation to the grantor, means —

- (a) the State in which the grantor’s sole place of business is located;
- (b) if the grantor has a place of business in more than one State, the State in which the central administration of the business of the grantor is exercised; and
- (c) if the grantor does not have a place of business, the State in which the grantor has his or her habitual residence.

(2) Without prejudice to subsection (3), references to the location of encumbered property or the grantor under this Part refers —

- (a) for creation of a security interest, to the location at the time of the putative creation of the security interest; and
- (b) for third-party effectiveness and priority, to the location at the time at which the issue arises or is relevant.

(3) If the right of a secured creditor in the encumbered property is created and made effective against a third party and the rights of the competing claimants are established before a change in the location of the property or the grantor, a reference in this Part to the location of the encumbered property or of the grantor is, with respect to third-party effectiveness and a priority, to the location before the change in location.

(4) A reference to the law of a State as the law applicable to an issue is a reference to the law in force in that State other than its laws governing conflict of laws.

(5) If the law applicable to an issue is the law of a State that comprises one or more territorial units each of which has its own rules of law in respect of that issue —

- (a) a reference in this Part to the law of a State means the law in force in the relevant territorial unit; and
- (b) the internal conflict-of-laws provisions of that State, or in the absence of such provisions, of that territorial unit determine the relevant territorial unit whose substantive law is to apply.

Choice of law by grantor and secured creditor

104. The law applicable to the mutual rights and obligations of the grantor and the secured creditor arising from a security agreement is the law specified in the security agreement and, in the absence of a choice of law, the law governing the security agreement.

Law applicable to a security interest in tangible property

105.—(1) Without prejudice to subsections (2) to (4) and section 116, the law applicable to the creation, effectiveness against third

parties and priority of a security interest in tangible property is the law of the State in which the tangible property is located.

(2) The law applicable to the priority of a security interest in tangible property covered by a document of title made effective against third parties by possession of the document of title as against the right of a competing claimant is the law of the State in which the document of title is located.

(3) The law applicable to the creation, third-party effectiveness and priority of a security interest in tangible property of a type ordinarily used in more than one State is the law of the State in which the grantor is located.

(4) A security interest in tangible property that is in transit at the time of its putative creation or intended to be relocated to a State other than the State in which it is located at that time may be created and made effective against third parties under the law of the State of the ultimate destination of the property, if the property reaches that State within thirty business days after the time of the putative creation of the security interest.

Law applicable to a security interest in intangible property

106. Without prejudice to sections 107, 113, 114, 115 and 116, the law applicable to the creation, effectiveness against a third party and priority of a security interest in intangible property is the law of the State in which the grantor is located.

Law applicable to a security interest in receivable relating to immovable property

107. Notwithstanding section 106, in the case of a security interest in receivables that arises from the sale or lease of immovable property or is secured by immovable property, the law applicable to the priority of the security interest in the receivable as against the right of a competing claimant that is registrable in the Registry of Lands in which interests in the relevant immovable may be registered is the law of the State where the immovable property is located.

Law applicable to enforcement of a security interest

108. The law applicable to issues relating to the enforcement of a security interest is the law applicable to the mutual rights and obligations of the grantor and the secured creditor arising from the security agreement, and the secured creditor may not obtain possession of tangible encumbered property in a manner that is not permitted under the law of the State in which the encumbered property is located.

Law applicable to security interest in proceeds

109.—(1) The law applicable to the creation of a security interest in proceeds is the law applicable to the creation of the security interest in the original encumbered property from which the proceeds arose.

(2) The law applicable to third-party effectiveness and priority of a security interest in proceeds is the law applicable to third-party effectiveness and priority of a security interest in an original encumbered property of the same kind as the proceeds.

Application of laws of Saint Lucia on grounds of public policy

110.—(1) This Part does not prevent the court from applying the laws of Saint Lucia that applies notwithstanding the law applicable under this Part.

(2) The court may exclude the application of a law applicable under this Part if and to the extent that the result of its application would be manifestly incompatible with fundamental notions of public policy in Saint Lucia.

(3) This section does not prevent a court from applying or taking into account public policy, or from applying or taking into account any law other than this Part, if the court is required to do so.

(4) This section does not permit the court to displace the provisions of this Part dealing with the law applicable to the third-party effectiveness and priority of a security interest.

Effect of commencement of insolvency proceedings

111. The commencement of insolvency proceedings in respect of a grantor does not displace the law applicable to a security interest under this Part.

Law applicable to debtor, obligor, issuer and secured creditor

112. The law governing the rights and obligations between a debtor of receivables, an obligor under a negotiable instrument or an issuer of a document of title and the grantor of a security interest in that type of movable property is the law applicable to —

- (a) the rights and obligations between the secured creditor and the debtor, obligor or issuer;
- (b) the conditions under which the security interest may be invoked against the debtor, obligor or issuer, including whether an agreement limiting the right of the grantor to create a security interest may be asserted by the debtor, obligor or issuer; and
- (c) determining whether the obligations of the debtor, obligor or issuer have been discharged.

Law applicable to a security interest in funds credited to a deposit account

113.—(1) Subject to section 114, the law applicable to the creation, effectiveness against third parties, priority and enforcement of a security interest in funds credited to a deposit account, to the rights and obligations between the financial institution and the secured creditor, is the law of the State in which the financial institution maintaining the account has its place of business.

(2) Where a financial institution has places of business in more than one State, the law applicable is the law of the State in which the office maintaining the deposit account is located.

Law applicable to third-party effectiveness of a security interest in certain types of movable property by registration

114. Where the law of the State in which a grantor is located recognizes a registered notice for achieving effectiveness against a

third party of a security interest in a negotiable instrument, document of title, funds credited to a deposit account or certificated non-intermediated security, the law of that State is the law applicable to the third-party effectiveness of the security interest in that negotiable instrument, document of title, the funds credited to a deposit account or that certificated non-intermediated security by registration.

Law applicable to a security interest in intellectual property rights

115.—(1) Subject to subsection (2), the law applicable to the creation, effectiveness against third parties and priority of a security interest in intellectual property rights is the law of the State in which the intellectual property is protected.

(2) A security interest in intellectual property rights may be created under the law of the State in which the grantor is located and may be made effective under that law against third parties other than another secured creditor, a transferee or a licensee.

(3) The law applicable to the enforcement of a security interest in intellectual property rights is the law of the State in which the grantor is located.

Law applicable to a security interest in non-intermediated securities

116.—(1) The law applicable to the creation, effectiveness against third parties, priority and enforcement of a security interest in non-intermediated securities other than debt securities, to its effectiveness against the issuer, is the law under which the issuer is constituted.

(2) The law applicable to the creation, effectiveness against third parties, priority and enforcement of a security interest in non-intermediated securities that are debt securities, to its effectiveness against the issuer, is the law governing the debt securities.

**PART VIII
MISCELLANEOUS**

Duty to act in good faith

117. A person shall, in the exercise of a right or performance of a duty under this Act, act in good faith and in a commercially reasonable manner.

Regulations

118.—(1) The Minister may make Regulations for giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Minister may make Regulations for —

- (a) the identification required by an identifier of the grantor and identifier of the secured creditor;
- (b) the information required for statistical purposes;
- (c) the period of effectiveness of a registered notice;
- (d) the conduct of the business of the Registry and the maintenance of the Registry records;
- (e) the payment of fees for the registration of an initial notice, amendment notice or cancellation notice;
- (f) in respect of a matter under Part III, including, the fees payable and the mode of payment;
- (g) the form of an initial notice, amendment notice, cancellation notice;
- (h) the contents and manner of submission of an initial notice, amendment notice and cancellation notice;
- (i) the form and method of disclosure of search results;
- (j) the form of a notification required to be given to a person by the Registry under this Act;
- (k) subject to affirmative resolution, provisions for the protection of consumers in respect of a specified category

of movable property capable of being subject to a security interest;

- (l) the provision of copies of a registered notice and the certification of the copies; or
- (m) any other matter in relation to the Registry.

Repeal

119. The following laws are repealed —

- (a) Agricultural Credit Act, Cap. 7.02;
- (b) Bill of Sale Act, Cap. 13.06.

Savings

120. Notwithstanding section 119 —

- (a) Regulations, an Order, a Notice or other statutory instrument made under an Act repealed under section 119 must, if in force at the commencement of this Act, continue in force until replaced by Regulations, an Order, a Notice or other statutory instrument made under this Act;
- (b) an act, decision or other matter carried out under an Act repealed under section 119 is deemed to have been carried out under this Act; and
- (c) subject to section 121, an action, proceedings and a similar matter commenced or pending under an Act repealed under section 119 continues under this Act as if it had been commenced under this Act.

Transitional

121.—(1) Subject to this section, this Act applies to a security interest, including a former security interest, within its scope, and an Act repealed under section 119 does not apply to a security interest, including a former security interest, within the scope of this Act.

(2) Subject to subsection (3), an Act repealed under section 119 applies to a matter that is the subject of proceedings before a court commenced before the commencement of this Act.

(3) Where enforcement of a former security interest has begun before the commencement of this Act, the secured creditor may continue enforcement under or may proceed under this Act.

(4) Where, under an Act repealed under section 119, the secured creditor of a former security interest, on default, could obtain possession of an encumbered property after default without making an application to the court, even without the grantor having consented in writing to such action, the secured creditor may do so under this Act with respect to the former security interest.

(5) A security interest that is effective against a third party under an Act repealed under section 119 remains effective between the parties notwithstanding that its creation does not comply with the creation requirements of this Act.

(6) A security interest that is effective against a third party under an Act repealed under section 119 continues, on the commencement of this Act, to be effective against a third party under this Act until the earlier of —

- (a) the time it would have ceased to be effective against a third party under an Act repealed under section 119; or
- (b) the expiration of three years after the commencement of this Act.

(7) If the third-party effectiveness requirements of this Act are satisfied before the third-party effectiveness of a security interest ceases under subsection (5), the security interest continues to be effective against a third party under this Act from the time when it is made effective against a third party under an Act repealed under section 119.

(8) Where third-party effectiveness requirements under this Act are not satisfied before third-party effectiveness of a security interest ceases under subsection (5), the security interest is effective against a third party from the time it is made effective against a third party under this Act.

(9) A written agreement between a grantor and a secured creditor creating a former security interest is sufficient to constitute authorization by the grantor for the registration of a notice covering the movable properties described in that agreement under this Act.

(10) Where a security interest under subsection (5) is effective against a third party by the registration of a notice under an Act repealed under section 119, the time of registration under an Act repealed under section 119 is the time to be used for the purposes of applying the priority rules of this Act that refer to the time of registration of a notice of a security interest.

(11) The priority of a security interest as against the rights of a competing claimant is determined by an Act repealed under section 119 if —

- (a) the security interest and the rights of a competing claimant arose before the commencement date of this Act; and
- (b) the priority status of the interest or security interest and the priority of the competing claims has not changed since the commencement date of this Act.

(12) For the purposes of subsection (11)(b), the priority status of a security interest has changed if —

- (a) it is effective against a third party on the commencement of this Act but ceased to be effective against a third party; or
- (b) it is not effective against a third party under an Act repealed under section 119 on the commencement of this Act, and subsequently became effective against a third party under this Act.

(13) This Act does not —

- (a) affect the rights and obligations of the grantor and the secured creditor under the Consumer Protection Act, Cap. 13.24;
- (b) override another law that limits —
 - (i) the creation or enforcement of a security interest in a specific type of movable property, or
 - (ii) the transferability of a specific type of movable property with the exception of a provision that limits the creation or enforcement of a security interest in,

No. 22] *Security Interest in Movable Property Act* [2022

or the transferability of, movable property on the sole ground that it is a future movable property or a part or undivided interest in movable property.

Passed in the House of Assembly this 11th day of October, 2022.

CLAUDIUS J. FRANCIS,
Speaker of the House of Assembly.

Passed in the Senate this 20th day of October, 2022.

DEALE LEE,
Deputy President of the Senate.