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PART I

## Acts, Ordinances, President's Orders and Regulations

## SENATE SECRETARIAT

*Islamabad, the 29th June, 2016*

**No. F. 9(12)/2016-Legis.**—The following Act of *Majlis-e-Shoora* (Parliament) received the assent of the President on 28th June, 2016 and is hereby published for general information:—

ACT NO. XXXI OF 2016

*An Act to provide for the creation of security interests over movable property and to establish a secured transactions registry*

WHEREAS it is expedient for the promotion and conduct of banking business to provide for the creation of security interests over movable property to secure the obligations owed by a customer to a financial institution, clarify and expand for the purpose the meaning and scope of movable property, provide for the establishment of a secured transactions registry, define, amend and codify certain laws relating to security interests over movable property and provide for matters connected therewith or incidental thereto.

It is hereby enacted as follows:—



*Price : Rs. 30:50*

[3218(2016)/Ex. Gaz.]

PART I

PRELIMINARY

1. **Short title, commencement and application.**—(1) This Act may be called the Financial Institutions (Secured Transactions) Act, 2016.

(2) It extends to the whole of Pakistan.

(3) It shall come into force upon issuance of the notification by the Federal Government under sub-section (2) of section 19.

2. **Definitions.**—(1) In this Act, unless there is anything repugnant in the subject or context,—

(i) "account debtor" means any person liable, whether under a contract or otherwise, to pay any receivables or discharge any obligation in respect of receivables;

(ii) "after-acquired property" means movable property that is acquired by a customer after entering into a security agreement, and includes future receivables as specified in the explanation to sub-section (4) of section 53;

(iii) "agricultural produce" means —

(a) any produce of agriculture or horticulture, including but not limited to crops (including growing crops), standing timber, poultry, fish and livestock (including unborn offspring); and

(b) products derived from any produce under clause (i), including but not limited to meat, eggs, hides, bones, skins, wool and hair;

(iv) "assignee" means a person in whose favour the receivables are assigned;

(v) "assignment of receivables" means a transfer of rights, title, interests and benefits of the receivables by the assignor to the assignee;

(vi) "assignor" means a person who assigns the receivables;

(vii) "book-entry security" shall have the same meaning as is assigned to it under clause (5) of section 2 of the Central Depositories Act, 1997 (XIX of 1997);

(viii) "collateral" l means the movable property, located in or outside Pakistan, that is subject to a security interest;

(ix) "commingled goods" means a product or mass that is produced or manufactured by physically associating or uniting collateral with other movable property in such a manner that the identity of the collateral is lost in such product or mass;

(x) "company" shall have the same meaning as is assigned to it under clause (7) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984);

(xi) "control" with respect to a deposit account exists —

(a) automatically upon the creation of the security interest if the secured creditor is the depository bank; or

(b) if the depository bank has entered into a control agreement with the customer and the secured creditor;

(xii) "control agreement" means an agreement in writing between the secured creditor, customer and the depository bank according to which the depository bank has agreed to follow instructions from the secured creditor with respect to the payment of funds credited in the deposit account without further consent from the customer;

(xiii) "customer" shall have the same meaning as is assigned to it under clause (c) of section 2 of the Recovery Ordinance and shall be deemed to include an entity;

(xiv) "deposit account" includes a current or a savings account maintained with a depository bank to which funds may be credited;

(xv) "depository bank" means the financial institution maintaining a deposit account;

(xvi) "electronic" shall have the same meaning as is assigned to it under clause (1) of section 2 of the Electronic Transactions Ordinance, 2002 (Ordinance No. LI of 2002);

(xvii) "entity" means a person other than a company, and includes a natural person, a sole proprietorship, a partnership or association of persons, a non-government organization registered under the Voluntary Social

Welfare Agencies (Registration and Control) Ordinance, 1961 (XLVI of 1961) or any other law for the time being in force for the registration of a non-government organization, a cooperative society registered under the Co-operative Societies Act, 1925 (VII of 1925) or any other law for the time being in force for the registration of a cooperative society, a society registered under the Societies Registration Act, 1860 (XXI of 1860) or any other law for the time being in force for the registration of a society, a trust created under the Trusts Act, 1882 (II of 1882); and a body corporate established pursuant to a law;

(xviii) "event of default", in relation to a security agreement, means —

(a) the failure to pay or to otherwise perform the obligation secured under the security agreement when due; or

(b) an event that gives the secured creditor the right to enforce the security interest under the security agreement;

(xix) "exempted property" means movable property as notified by the Federal Government for the purposes of sub-section (2) of section 4 notwithstanding anything inconsistent therewith contained in the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (Act V of 1908) or any other law for the time being in force, provided that until such notification has been issued the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (Act V of 1908) shall continue to apply;

(xx) "financing statement" means the prescribed form to be filed in the register for the purposes of entering the particulars of a security interest created by an entity in the register;

(xxi) "floating charge" means a charge created by a customer, on all present and after-acquired movable property or a certain class of present and after-acquired movable property (including receivables or inventory), in favour of a secured creditor and pursuant to which the customer is free to deal with the movable property in the ordinary course of its business until the crystallization, in terms of the security agreement, of such charge into a fixed charge;

(xxii) "Form 10" means the prescribed form to be filed with the registrar of companies for the purposes of entering the particulars of a security interest created by a company in the register of mortgages and charges under the Companies Ordinance, 1984 (XLVII of 1984);

(xxiii) "Form 16" means the prescribed form to be filed with the registrar of companies for the purposes of modifying the particulars of a security interest created by a company in the register of mortgages and charges under the Companies Ordinance, 1984 (XLVII of 1984);

(xxiv) "hypothecation" means a charge created by a customer, on all or any present or after-acquired movable property, in favour of a secured creditor without delivery of possession of the movable property to such secured creditor;

(xxv) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and shall, notwithstanding anything inconsistent therewith contained in the General Clauses Act, 1897 (X of 1897), Transfer of Property Act, 1882 (IV of 1882), Registration Act 1908, (XVI of 1908) and any other law for the time being in force, exclude property attached to immovable property as defined in clause (xxxviii) of this sub-section;

(xxvi) "information system" shall have the same meaning as is assigned to it in section 2 (p) of the Electronic Transactions Ordinance, 2002 (LI of 2002);

(xxvii) "modification statement" means the prescribed form to be filed in the register for the purposes of effecting the modification to a registered financing statement;

(xxviii) "motor vehicle" shall have the same meaning as is assigned to it under sub-section (23) of section 2 of the Motor Vehicles Ordinance, 1965 (XIX of 1965);

(xxix) "movable property" means any tangible or intangible property other than immovable property, including but not limited to receivables; rights under letters of credit; rights under trust receipts; securities (including Government securities) other than hook-entry securities; right to funds credited in a deposit account; title documents; negotiable instruments; intellectual property, including patents, trademarks, copy rights, trade-names, goodwill, royalties; stock in trade; inventory; interest in partnership and other form of entity; ornaments; jewellery; stones; goods-in-transit; agricultural produce; leaves; grass, including growing grass; petroleum or minerals that have been extracted; motor vehicles and property attached to immovable property as defined in clause (xxxviii) of this sub-section;

(xxx) "negotiable instrument" shall have the same meaning as is assigned to it under section 13 of the Negotiable Instruments Act, 1881 (XXVI of 1881);

(xxxi) "notification" means a notification published in the official Gazette;

(xxxii) "perfection" means the act required to be done in terms of section 14 to make a security interest effective against third parties;

(xxxiii) "pledge" shall have the same meaning as is assigned to it under section 172 of the Contract Act, 1872 (IX of 1872) and excludes a security interest in a negotiable instrument or a security interest in collateral covered by a title document;

(xxxiv) "possession" means the actual possession of collateral by a person or an agent or employee of that person, or by an independent person that acknowledges holding it for that person;

(xxxv) "preferential claims" means the claims to be paid in priority on insolvency of a customer as prescribed in section 405 of the Companies Ordinance, 1984 (XLVII of 1984) or section 61 of the Provincial Insolvency Act, 1920 (V of 1920) or section 49 of the Insolvency (Karachi Division) Act, 1909 (III of 1909), as applicable;

(xxxvi) "prescribed" means prescribed by rules or regulations made under this Act;

(xxxvii) "proceeds" means identifiable or traceable movable property derived from collateral including (a) movable property acquired, directly or indirectly, upon the sale, lease, licence, exchange, or any other mode of alienation of collateral; (b) natural fruits of the collateral, including harvested produce where the collateral is crops or wool, meat or offspring where the collateral is livestock; (c) any and all amounts, revenues and receivables paid or payable under or in connection with the collateral; (d) rights arising out of the collateral, including a right to an insurance payment or any other payment as indemnity or compensation for loss of, or damage to the collateral; and (e) proceeds of proceeds;

(xxxviii) "property attached to immovable property" means the following property irrespective of whether it is attached to the earth or permanently fastened to anything attached to the earth:

(a) plant, equipment or machinery;

(b) fixtures and fittings;

(c) cables or pipelines embedded in the earth or otherwise; and

(d) any other item of property as may be notified by the Federal Government for the purposes of this Act notwithstanding anything inconsistent therewith contained in the General Clauses Act, 1897 (X of 1897), Transfer of Property Act, 1882 (IV of 1882), Registration Act, 1908 (XVI of 1908) and any other law for the time being in force;

(xxxix) "receivables" means a contractual or non-contractual right to receive money, whether such right is existing, future, accruing, conditional or contingent and includes rents; profits; dues; a money award by an arbitrator; monies payable as salaries of employees; dividends; tolls, user-fees or any sum, by whatever name called; monies payable under decrees; monies payable under guarantees; actionable claims and all kinds of actual or contingent monetary obligations; and excludes a right to payment of funds credited in a deposit account and right to payment under a negotiable instrument;

(xl) "Recovery Ordinance" means the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001);

(xli) "register" means the electronic register set up under section 21;

(xlii) "registrar" means the person in-charge of the Registry appointed under sub-section (1) of section 20 and shall include, unless the context requires otherwise, a deputy registrar discharging the functions, duties and powers of the registrar pursuant to sub-section (2) of section 20;

(xliii) "registration" —

(a) in relation to a security interest created by an entity, means that a financing statement and modification statements in relation thereto, if any, have been registered in the register in respect of such security interest in accordance with the provisions of Part IV of this Act; or

(b) in relation to a security interest created by a company, means that a Form 10 and Form 16, if any, have been registered in the register of mortgages and charges in respect of such security

interest in accordance with the provisions of the Companies Ordinance, 1984 (XLVII of 1984);

(xliv) "registration number" is the number assigned to a registered modification statement and termination statement by the register pursuant to clause (b) of sub-section (1) of section 22;

(xlv) "Registry" means the Secured Transactions Registry established under section 19;

(xlvi) "secured creditor" means a financial institution or a consortium of financial institutions in whose favour a security interest is created by the customer in respect of any finance and includes a trustee appointed by them;

(xlvii) "security agreement" means an agreement, instrument or any other document in writing that creates or provides for a security interest in favour of a secured creditor;

(xlviii) "security interest" means a right, title, encumbrance or interest of any kind upon movable property created or provided for by a security agreement in relation to a transaction that in substance secures the payment or performance of a customer's obligation under a finance without regard to the form of the transaction or the terminology used by the parties or the identity of the person who has title to the movable property, and includes any charge, mortgage, hypothecation, fixed charge, floating charge, assignment, lien, pledge, assignment of receivables by way of security and transactions under which a secured creditor retains title such as a finance lease, hire purchase agreement, sale and lease back arrangement, conditional sale agreement and retention of title arrangement, having similar effect;

(xlix) "statement" means the financing statement, modification statement and termination statement;

(l) "termination statement" means the prescribed form to be filed in the register for the purposes of rendering a registered financing statement and modification statements in relation thereto, if any, ineffective;

(li) "title document" means a document in writing evidencing title to goods which is, by law or custom, negotiable, and includes a bill of lading, dock warrant, warehouse receipt, railway receipt, airway bill, truck receipts or similar record issued by a person in the business of transporting or storing goods;

(lii) "unique registration number" is the number assigned to a registered financing statement by the register pursuant to clause (a) of sub-section (1) of section 22;

(liii) "value" means the consideration that a person gives where such person acquires the rights —

(a) in return for a binding commitment to give finance;

(b) as security for, or satisfaction of, a pre-existing claim, in whole or in part;

(c) in return for a promise or anything given in exchange; and

(liv) "vehicle registration number" means the number assigned to a motor vehicle by the relevant registering authority for the purposes of registration of such motor vehicle under the Motor Vehicles Ordinance, 1965 (XIX of 1965).

(2) Words and expressions used but not defined herein shall, unless repugnant to the context, have the same meaning as is assigned to them under the Recovery Ordinance.

3. **Scope of Act.**—This Act shall not apply to or affect any of the following, namely:—

(a) a security interest in any immovable property;

(b) a security interest in a book-entry security;

(c) a security interest created by operation of law, including but not limited to a lien on movable property under the Sale of Goods Act, 1930 (III of 1930) or the Contract Act, 1872 (IX of 1872), except for the purposes of determining priority of such security interests as set forth in Part V of this Act;

(d) a security interest in any aircraft as defined in sub-clause (b) of section 2 of the Civil Aviation Ordinance, 1960 (XXXII of 1960); and

(e) a security interest in any vessel as defined in sub-section (56) of section 2 of the Merchant Shipping Ordinance, 2001 (LII of 2001).

PART II

## CREATION OF SECURITY INTERESTS

4. **Right to create a security interest.**—(1) Subject to sub-section (2), a customer may create a security interest to secure its own obligation or that of another person in accordance with the provisions of this Act.

(2) A customer shall not create a security interest in exempted property and, if created, such security interest shall be void.

5. **Effectiveness of a security interest.**—A security interest created in favour of a secured creditor shall be effective against the customer only if—

(a) the customer and the secured creditor have agreed to create a security interest in favour of the secured creditor;

(b) in the case of a pledge and security interests created pursuant to sections 11 and 12, the customer has also given possession of the collateral to the secured creditor;

(c) the secured creditor has given value to the customer; and

(d) the customer has rights in the collateral or the power to transfer rights in the collateral.

6. **Security agreement.**—(1) The secured creditor and the customer shall enter into a security agreement in terms of sub-section (2) for all security interests other than security interests created pursuant to sections 11 and 12.

(2) A security agreement shall state –

(a) the name and address of the secured creditor and customer;

(b) the obligations secured by the security interest;

(c) a description of the collateral in a manner that reasonably allows its identification; and

(d) the date of its execution.

7. **Security interest in proceeds.**—(1) A security interest shall extend to the proceeds of the collateral, unless the security agreement provides otherwise.

(2) A security interest in proceeds shall be effective against the customer whether or not the security agreement contains a description of the proceeds.

8. **Security interest in commingled goods.**—(1) A security interest shall extend to commingled goods, unless the security agreement provides otherwise.

(2) The security interest in the commingled goods shall be limited to the value of the collateral immediately before it became part of such commingled goods.

9. **Security interest in after-acquired property.**—(1) A security agreement may provide for a security interest in after-acquired property.

(2) Unless otherwise provided in a security agreement, the security interest shall attach to after-acquired property on the acquisition by the customer of rights in the after-acquired property.

10. **Future finance.**—(1) Subject to sub-section (2), a security interest shall not extend to future finance that has not been committed to be extended to the customer at the time of the creation of security interest, unless the security agreement provides otherwise.

(2) Section 174 of the Contract Act, 1872 (IX of 1872) shall apply in the case of a pledge and a security interest in collateral covered by a title document created pursuant to section 11.

11. **Security interest in collateral covered by a title document.**—(1) A security interest may be created in collateral covered by a title document by giving possession to the secured creditor of the title document duly endorsed in favour of such secured creditor or issued in his name.

(2) A security agreement shall not be required where a security interest in collateral covered by a title document is created in accordance with sub-section (1).

*Explanation.*—Collateral shall be covered by a title document where such collateral is in the possession of the issuer of the title document.

12. **Security interest in a negotiable instrument.**—(1) A security interest may be created in a negotiable instrument by issuing it in the name of the secured creditor or negotiating it in favour of the secured creditor in accordance with the Negotiable Instruments Act, 1881 (XXVI of 1881).

(2) A security agreement shall not be required where a security interest in a negotiable instrument is created in accordance with sub-section (1).

(3) If a negotiable instrument is secured by movable property, then, unless otherwise agreed between the secured creditor and the customer, such security shall stand automatically transferred to and vest in the secured creditor upon creation of the security interest in terms of sub-section (1).

13. **Security interest in a right to payment of funds credited in a deposit account.**—Where the depository bank is not the secured creditor, creation of a security interest in a right to payment of funds credited in a deposit account shall not bind or otherwise impose any obligation on the depository bank with respect to the security interest unless such security interest has been created with the prior written consent of such depository bank.

## PART III

## PERFECTION OF SECURITY INTERESTS

14. **Perfection.**—( 1 ) A security interest may be perfected —

(a) in the case of a pledge created by a company, by possession of the collateral by the secured creditor;

(b) in the case of a pledge created by an entity, by registration as provided under this Act; or

(c) in the case of any other security interest, by registration as provided under this Act.

(2) Notwithstanding sub-section (1) and subject to sub-section (3), —

(a) a security interest in a right to payment of funds credited in a deposit account may be perfected only by control;

(b) a security interest in collateral covered by a title document may be perfected only by possession of the title document by the secured creditor; and

(c) a security interest in a negotiable instrument may be perfected only by possession of the negotiable instrument by the secured creditor.

*Explanation.*—Perfection of security interests under clauses (a), (b) and (c) shall not require registration as provided under this Act.

(3) Sub-section (2) shall not be applicable where a security interest in a right to payment of funds credited in a deposit account or a security interest in collateral covered by title document or a security interest in a negotiable instrument is—

(a) created as part of a hypothecation or floating charge that may otherwise be perfected by registration under clause (c) of sub-section (1); or

(b) in the nature of proceeds of collateral that is otherwise perfected in accordance with section 15.

ILLUSTRATIONS

(a) Customer A (an entity) entered into a share pledge agreement with Secured Creditor B and delivered possession of the share certificates to Secured Creditor B on the 1st December. A financing statement was registered in the register in respect of the share pledge on the 3rd December. The share pledge was perfected by registration on the 3rd December.

(b) Customer C (an entity) created a hypothecation on all present and after-acquired inventory in favour of Secured Creditor D on the 1st January. A financing statement was registered in the register in respect of the hypothecation on the 3rd January. The hypothecation was perfected by registration on the 3rd January.

(c) Customer N (an entity) enters into an assignment agreement with Secured Creditor M on the 1st March pursuant to which Customer N assigns receivables under a supply agreement as security in favour of Secured Creditor M. A financing statement was registered in the register in respect of the assignment on the 3rd March. The assignment of receivables by way of security was perfected by registration on the 3rd March.

(d) Customer G (an entity) leases a car from Secured Creditor H pursuant to a finance lease agreement on the 1st December. Secured Creditor H is registered as the owner of the car. A financing statement was registered in the register in respect of the Finance lease on the 2nd December. The finance lease was perfected by registration on the 2nd December.

(e) Customer F (a company) created a security interest in a right to payment of funds credited in a deposit account in favour of Secured Creditor G on the 1st December. The deposit account was maintained with the Depository Bank H. A control agreement was entered into between Customer F, Secured Creditor G and Depository Bank H on the 2nd December. The security interest in a right to payment of funds credited in a deposit account was perfected by control on the 2nd December.

(f) Customer H (an entity) created a hypothecation on all its present and after-acquired movable property (including funds held in deposit accounts) in favour of Secured Creditor P on the 1st March. A financing statement in respect of the hypothecation was registered in the register on the 4th March. The hypothecation was perfected by registration on the 4th March. In this case, the security interest in a right to payment of funds credited in a deposit account (created as part of the hypothecation) was also perfected by registration.

(g) Customer M (a company) created a hypothecation over its equipment in favour of Secured Creditor N on the 5th April. The hypothecation extended to any proceeds received from the sale of the equipment with the Creditor N.

A financing statement was registered in the companies' register of mortgages and charges on the 10th April in respect of the hypothecation. The hypothecation was perfected by registration on the 10th April.

The Secured Creditor N authorized in writing the sale of the equipment by Customer M on the 5th May which resulted in Customer M receiving a cheque of one hundred thousand rupees in the form of proceeds arising from the sale of such equipment.

In this case, Secured Creditor N's security interest in the cheque of one hundred thousand rupees (a negotiable instrument) was also perfected by registration on the 10th April.

15. **Perfection in after-acquired property, proceeds and commingled goods.**—(1) A security interest in after-acquired property, proceeds or commingled goods, where applicable, shall stand automatically perfected by virtue of the perfection of the security interest in the collateral.

(2) Where a security interest is perfected by registration as provided under this Act, sub-section (1) shall not apply if the after-acquired property, non-cash proceeds or commingled goods, as applicable, is not covered in the registered financing statement or Form 10, as applicable.

*Explanation.* For the purposes of sub-section (2), non-cash proceeds shall include all proceeds other than money, cheques, funds credited in a deposit account or the like.

16. **Specialized registry.**—A security interest in intellectual property that requires registration in a specialized registry pursuant to any other law currently in

force, may, notwithstanding the provisions of such law, be perfected only by registration as provided under this Act.

17. **Unperfected security Interests.**—A security interest that is not perfected shall be void against the liquidator, administrator or receiver but shall not prejudice the secured creditor's right to repayment of finance as an unsecured creditor.

## PART IV

## REGISTRATION

18. **Application of this Part.**—(1) This Part shall apply only to an entity creating a security interest.

(2) This Part of the Act shall not apply to a company and shall not affect the provisions contained in the Companies Ordinance, 1984 (XLVII of 1984) requiring registration of security interests created by a company.

19. **Secured Transactions Registry.**—(1) The Federal Government shall, by notification in the official Gazette, establish or cause to be established a registry to be known as the 'Secured Transactions Registry' for the purposes of registration of security interests created by an entity and all matters incidental thereto.

(2) The Federal Government shall, by notification in the official Gazette, specify the date from which the Registry established under sub-section (1) shall be operational.

(3) The head office of the Registry, established under sub-section (1) and made operational under sub-section (2), shall be at such place as the Federal Government may specify and the Federal Government may, if considered necessary, establish branch offices of the Registry at such other places as the Federal Government deems fit for the purposes of facilitating registration of security interests created by an entity and to perform any or all of the functions of the Registry, as may be determined by the Federal Government.

(4) The Federal Government may, by notification in the official Gazette, define the territorial limits within which an office of the Registry may exercise its functions.

(5) The Registry shall have its own seal.

20. **Appointment of registrar, deputy registrars and other officers.**—(1) The Federal Government shall, by notification, appoint a registrar as the head of

the Registry for the purposes of managing and controlling the register set up pursuant to section 21 and such other functions as may be determined by the Federal Government, on such terms and conditions as it may think fit:

Provided that the registrar shall be (a) a Government officer not below BS 21; or (b) a retired judge of the Supreme Court of Pakistan or any High Court; or (c) an eminent professional from private sector of known integrity and competence with qualification and experience of at least ten years in the private sector in the field of finance, banking, business or law.

(2) The Federal Government may, by notification in the official Gazette, appoint deputy registrars for each branch office of the Registry to perform, under the control and superintendence of the registrar, such functions, duties and powers of the registrar under this Act as may be notified by the Federal Government.

(3) The registrar may appoint such other officers with such designations as he may think fit for the purposes of discharging, under the superintendence and direction of the registrar, such functions, duties and powers under this Act as may be determined by the registrar.

21. **Register of security interests.**—(1) A register shall be maintained in electronic format at the head office of the Registry to record statements in relation to security interests created by an entity.

(2) The register shall be maintained and operated under control and management of the registrar.

(3) The register shall be operated using an automated information system which shall —

(a) allow a secured creditor to file a statement in terms of sections 23, 24 and 26;

(b) allow a secured creditor to file a security agreement and any amendments thereto in terms of section 25;

(c) reject filing of a statement in terms of section 28;

(d) issue a verification statement in terms of section 29;

(e) allow a person to search the register in terms of section 33;

(f) issue search reports under sub-section (3) of section 33;

(g) allow a secured creditor to pay the prescribed fees, if any, for filing statements in the register;

(h) allow a person to pay the prescribed fees for searching the register in terms of section 33;

(i) allow an entity or any person having rights in the collateral to file an application under sub-section (3) of section 31; and

(j) allow a person to do such other things as are required or permitted by, or under, this Act to be done by a person in relation to the register.

(4) The registrar may, by way of regulations, prescribe requirements for the use of the register for any or all acts under sub-section (3).

22. **Organization of the register.**—(1) The register shall assign—

(a) a unique registration number to each registered financing statement; and

(b) a registration number to each registered modification statement and termination statement relating to a registered financing statement under clause (a) in a manner that associates them with the unique registration number assigned to such registered financing statement.

(2) The register shall index registered financing statements by —

(a) the name of the entity;

(b) where the entity is a natural person, the National Identity Card number or National Identity Card for Overseas Pakistanis number, or in the case of a foreign national, the passport number;

(c) the vehicle registration number; and

(d) the unique registration number.

23. **Financing statement.**—(1) The secured creditor may, in respect of a security interest, file a financing statement in the register.

(2) The financing statement shall be in such form as may be prescribed by rules and contain the following particulars of a security interest:

(a) name of the entity;

(b) address of the entity;

(c) type of the entity;

(d) where the entity is a natural person, the National Identity Card number or National Identity Card for Overseas Pakistanis number, or in the case of a foreign national, the passport number;

(e) name and address of the secured creditor;

(f) type of the security interest;

(g) maximum amount secured by the security interest;

(h) description of the collateral, including the vehicle registration number in case of a motor vehicle, and its proceeds, where applicable; and

(i) in case of a floating charge, the nature of restriction, if any, on the power of the entity to create further security interests over all or part of the collateral.

(3) A financing statement may be filed only after the secured creditor and the entity have entered into a security agreement and the secured creditor shall be deemed to have been authorized by the entity to file such financing statement by virtue of the entity executing the security agreement.

24. **Modification of a registered financing statement.**—(1) The secured creditor may, in relation to a registered financing statement, file a modification statement in the register in respect of —

(a) transfer of all or part of the security interest to which the registered financing statement relates;

(b) change in description of collateral;

(c) addition or omission of collateral;

(d) change in maximum amount secured by the security interest;

(e) change in name of the entity;

(f) change in address of the entity;

(g) where the entity is a natural person, change in the National Identity Card number or National Identity Card for Overseas Pakistanis number, or, in case of a foreign national, passport number;

(h) change in type of the entity;

(i) change in name or address of the secured creditor; or

(j) any other alteration to the information contained in the registered Financing statement.

(2) The modification statement shall be in such form as may be prescribed by rules and contain the following particulars, namely:—

(a) unique registration number; and

(b) nature of modification to the registered financing statement.

(3) The filing of the modification statement by the secured creditor under sub-section (1) shall not require authorization in writing by the entity, unless the modification is in respect of an increase in the maximum amount secured by the security interest or is in respect of an addition of collateral or otherwise increases the exposure of the entity to the secured creditor.

25. **Filing of security agreement.**— A secured creditor may, in respect of a security interest, file a security agreement and any amendments thereto in the register as an attachment to a financing statement or a modification statement, as applicable.

26. **Termination of a registered financing statement.**—(1) A secured creditor shall, in relation to a registered financing statement, file a termination statement in the register within fifteen working days from the date of payment or satisfaction, in full, of the obligation to which the registered financing statement relates.

(2) The termination statement shall be in such form as may be prescribed by rules and contain the following particulars, namely:—

(a) unique registration number; and

(b) date on which the obligation was paid or satisfied, in full.

27. **Effectiveness of filing.**— A statement shall stand registered when a unique registration number or registration number, as applicable, date and time is assigned to it in the register and such statement becomes publicly searchable.

28. **Rejection of filing.**— A statement shall not be registered, if —

(a) the particulars required to be entered in a statement are incomplete; or

(b) the secured creditor has failed to pay the prescribed fee, if any, for filing the statement in the register.

29. **Verification statement.**—(1) In respect of a registered statement, a verification statement shall be issued to the secured creditor in such form as may be prescribed by rules and contain the following information:

(a) unique registration number or registration number, as applicable;

(b) particulars as stated in the statement; and

(c) date and time on which the statement was registered.

(2) The verification statement shall be conclusive evidence that a statement has been registered in accordance with the requirements of Part IV of this Act.

30. **Ineffectiveness of a registered financing statement and modification statement.**—(1) A registered financing statement shall be ineffective, if —

(a) particulars of an entity under clauses (a) and (d) of sub-section (2) of section 23 are stated incorrectly such that a search of the register would not retrieve the registered financing statement;

(b) description of the collateral is stated insufficiently such that a search of the register would not reveal the same collateral, provided that the registered financing statement shall be ineffective only to the extent of the collateral which has been insufficiently described and will not render the registered financing statement ineffective with respect to other collateral sufficiently described;

(c) the vehicle registration number is stated incorrectly such that a search of the register would not retrieve the registered financing statement; or

(d) the entity has not entered into a security agreement with the secured creditor as required under sub-section (3) of section 23.

(2) If the secured creditor fails to file a modification statement in relation to a registered financing statement in respect of a change under clause (e) or (g) as required under sub-section (1) of section 24 within ten days of acquiring actual knowledge of such change by the entity, the registered financing statement shall be ineffective against—

(a) a competing security interest that has been perfected after such change but before filing of the modification statement by the secured creditor; and

(b) a purchaser, lessee or licensee acquiring rights in the collateral after such change but before filing of the modification statement by the secured creditor.

(3) A registered modification statement shall be ineffective if it has been filed without the authorization in writing by the entity where such authorization is required under sub-section (3) of section 24.

31. **Rectification of register.**— (1) The entity or any person having rights in the collateral covered in a registered financing statement may give a written demand to the secured creditor to

(a) file a modification statement, if—

(i) description of the collateral is insufficient or refers to movable property that is not collateral under the security agreement;

(ii) the vehicle registration number is incorrect;

(iii) the secured creditor has agreed to release part of the collateral and has failed to file a modification statement in respect thereof as required under sub-section (1) of section 24; or

(iv) there is any other omission or misstatement of any particular in a registered financing statement that detrimentally affects rights of the entity:

(b) file a termination statement, if—

(i) the obligation to which the registered financing statement relates has been paid or satisfied, in full, and the secured creditor has failed to file a termination statement within the prescribed period under sub-section (1) of section 26; or

(ii) the entity has not entered into a security agreement with the secured creditor as required under sub-section (3) of section 23.

(2) A demand under sub-section (1) shall require the secured creditor to file, at its own expense, a modification statement or termination statement, as applicable, within fifteen days from the date of receiving such demand.

(3) If the secured creditor fails to file a modification statement or termination statement, as applicable, within fifteen days of receiving the demand under sub-section (1), the entity or person making the demand may, by filing an application in writing, request the registrar to file such modification statement or termination statement, as applicable, along with a copy of the written demand and response, if any, from the secured creditor.

(4) On receipt of an application under sub-section (3), the registrar shall cause a written notice to be sent to the secured creditor calling upon him to show cause, within a time not exceeding twenty days from the date of receiving such notice, as to why the modification statement or termination statement, as applicable, should not be filed.

(5) The registrar shall, if no cause is shown, file the modification statement or termination statement, as applicable, in the register.

(6) Where cause is shown, the registrar shall inform the entity or person making the demand under sub-section (3) in writing that the modification statement or termination statement, as applicable, cannot be filed for reasons stated therein.

32. **Removal of a registered financing statement.**—(1) A registered financing statement and any modification statements in relation thereto shall be removed from the register after thirty days from the date on which a termination statement has been filed in the register in respect of such registered financing statement pursuant to section 26 or section 31.

(2) Upon removal from the register, the registered financing statement and any modification statements in relation thereto shall not be publicly searchable.

(3) Notwithstanding removal from the register, the Registry shall retain records of a registered financing statement and any modification statement and

termination statement in respect thereof for a period of ten years from the date on which the termination statement was filed pursuant to section 26 or section 31.

33. **Right to search the register.**—(1) Any person shall be entitled to search the register and obtain reports therefrom on payment of a prescribed fee.

(2) The register may be searched by reference to the following criteria, namely:—

(a) name of the entity;

(b) where the entity is a natural person, the National Identity Card Number or National Identity Card for Overseas Pakistanis number, or in case of a foreign national, the passport number;

(c) unique registration number;

(d) the vehicle registration number; or

(e) any other criteria prescribed by regulations.

(3) On a search of the register, a search report shall be issued in such form as may be prescribed by rules and shall set forth all registered financing statements and modification statements in relation thereto in the register relating to the search criterion used:

Provided that where the search does not produce any results, the search report shall state and confirm that there are no registered financing statements relating to the search criterion used.

(4) A search report issued under sub-section (3) shall be conclusive evidence of the registered financing statements and modification statements in relation thereto to which the search relates including —

(a) unique registration number or registration number, as applicable, date and time on which the financing statements and modification statements in relation thereto were registered; and

(b) order of the registered financing statements and modification statements in relation thereof set out in the search report.

34. **Outsourcing.**—The Federal Government may issue a licence to any local or foreign entity for operating and maintaining the register or for performing any of the functions of the Registry in respect of the register.

PART V

PRIORITY OF SECURITY INTERESTS

CHAPTER I

GENERAL PRIORITY RULES

35. **Priority of security interests in the same collateral where there is no other way of determining priority.**—Unless otherwise provided in this Part V, the following rules shall apply, to determine priority of security interests over the same collateral, namely:—

(a) between security interests that have not been perfected, the first in time to create the security interest shall prevail;

(b) a perfected security interest has priority over a security interest that has not been perfected; and

(c) between perfected security interests, the first in time to perfect the security interest in accordance with section 14 shall prevail.

*Explanation.*—

(i) Between security interests that have been perfected by registration as provided under this Act, priority will be determined by the order of registration.

(ii) Between security interests that have been perfected by possession or control, priority will be determined by the order of possession or control.

(iii) Between a security interest that has been perfected by registration as provided under this Act and a security interest that is perfected otherwise than by registration, priority will be determined by the order of registration or perfection otherwise than by registration, whichever occurs first.

36. **Priority of security interest in proceeds.**—A security interest in proceeds shall have the same priority as the security interest in the collateral.

37. **Priority extending to future finance.**—Where a security interest extends to future finance, the security interest shall have the same priority in respect of existing and future finance.

38. **Priority of security interest in after-acquired property.**—The priority of a security interest that is perfected by registration as provided under this Act shall extend to all the collateral stated in the registered financing statement or Form 10, as applicable, regardless of whether it is present or after-acquired property.

39. **Extent of priority.**—(1) The priority of a security interest that is perfected by registration as provided under this Act is limited to the maximum amount secured by the security interest as stated in the registered financing statement or Form 10, as applicable.

(2) Where the maximum amount secured by the security interest as stated in the registered financing statement or Form 10, as applicable, is increased by way of a registered modification statement or Form 16, the priority of the security interest in respect of such increase shall be from the date the modification statement or Form 16, as applicable, was registered.

(3) Where a modification statement or Form 16, as applicable, has been registered in respect of an addition of collateral, other than by way of proceeds, the priority of the security interest in respect of such additional collateral shall be from the date the modification statement or Form 16, as applicable, was registered.

40. **Subordination.**—An agreement may be entered into between secured creditors of a customer or between a secured creditor and a customer pursuant to which one secured creditor subordinates his security interest to the security interest of another secured creditor.

41. **Right of secured creditor to follow the collateral.**—(1) Unless otherwise provided in Chapter III of this Part V of this Act, if a customer transfers, leases or licenses collateral that is, at the time of transfer, lease or licence, subject to a perfected security interest, the transferee, lessee or licensee shall acquire the collateral subject to such perfected security interest.

(2) A secured creditor's right to follow the collateral under sub-section (1) shall be without prejudice and in addition to the secured creditor's right to the proceeds of the collateral, where applicable.

## CHAPTER II

## SPECIAL PRIORITY RULES

42. **Priority of security interest based on retention of title arrangement.**—(1) A security interest based on retention of title arrangement and perfected by registration as provided under this Act within ten days of the date of the

security agreement shall have priority over all other competing security interests in the same collateral irrespective of the time of perfection of such competing security interests.

(2) Sub-section (1) shall be applicable only where the collateral is a motor vehicle or such other movable property as may be notified by the Federal Government for the purposes of this section.

***Illustration***

Secured Creditor A has a hypothecation on all present an after-acquired movable property of Customer B (an entity) that was perfected by registration in the register on 1st December.

Customer B leases a car from Secured Creditor C pursuant to a finance lease agreement on lst February. The ownership of the car is registered in the name of the Secured Creditor C. Secured Creditor C also perfects its security interest in the car by registration in the register on 4th February.

Secured Creditor C will have priority over Secured Creditor A.

43. **Priority between secured creditor and bailee providing services in respect of the collateral.** —A secured creditor shall have priority over a bailee having a lien in respect of the collateral under section 170 of the Contract Act, 1872 (IX of 1872), provided the security interest was perfected before the bailment was created.

44. **Priority between secured creditor and unpaid seller.**—An unpaid seller having a lien in respect of the collateral under the Sale of Goods Act, 1930 (III of 1930) shall have priority over a secured creditor.

45. **Priority between secured creditor and a bank having a bankers' lien.** —A bank having a bankers' lien under section 171 of the Contract Act, 1872 (IX of 1872) shall have priority over a secured creditor unless such bank has in writing waived of its bankers' lien.

46. **Priority of security interest in a right to payment of funds credited in a deposit account.**—(1) A security interest in a right to payment of funds credited in a deposit account that is perfected by control has priority as against a security interest in a right to payment of funds credited in a deposit account that is perfected other than by control pursuant to sub-section (3) of section 14.

(2) A depository bank's right of set-off against the customer's obligations shall have priority over a security interest in the right to payment of funds credited in a deposit account unless the depository bank has, in terms of the control agreement, waived of its right of set-off.

(3) Sub-section (2) shall not in any way affect the depository bank's right of set-off under the insolvency laws.

***Illustrations***

(a) Secured Creditor A has a security interest in a right to payment of funds credited in a deposit account of Customer B (a company) that was perfected by control on the 25th December.

Secured Creditor C has a hypothecation on all the present and after-acquired movable property (including funds credited in deposit accounts) of Customer B that was perfected by registration on the 1st December.

Secured Creditor A shall have priority over Secured Creditor C.

(b) Secured Creditor A has a security interest in a right to payment of funds credited in a deposit account of Customer B (an entity) that was perfected by control on the 25th December.

Secured Creditor C has a floating charge on Customer B's present and after-acquired inventory that was perfected by registration on the 1st December. Secured Creditor C's floating charge shall extend to the proceeds, *i.e.* sale proceeds of inventory that are credited in a deposit account over which Secured Creditor C has no control.

Secured Creditor A shall have priority over Secured Creditor C.

47. **Priority of security interest in collateral covered by title document.**—A security interest in collateral covered by title document that is perfected by possession has priority as against a security interest in collateral covered by title document that is perfected other than by possession pursuant to sub-section (3) of section 14.

***Illustration***

Secured Creditor A has a security interest in collateral covered by a title document of Customer B (an entity) that was perfected by possession on the 25th December.

Secured Creditor C has a hypothecation on all the present and after-acquired movable property (including goods-in-transit covered by title documents) of Customer B that was perfected by registration on the 1st December.

Secured Creditor A shall have priority over Secured Creditor C.

48. **Priority between a perfected floating charge and fixed charge over the same collateral.** — (1) Subject to sub-section (2), a fixed charge perfected after an earlier perfected floating charge over the same collateral shall have priority so long as such floating charge has not crystallized into a fixed charge.

(2) An earlier perfected floating charge shall have priority over a subsequently perfected fixed charge over the same collateral, where—

(a) the security agreement creating such floating charge contains a provision prohibiting the creation of any further security interest over the same collateral; and

(b) the secured creditor taking a subsequent fixed charge over the same collateral has notice of the provision in clause (a).

(3) If the restriction under clause (a) of sub-section (2) is stated in the registered financing statement or Form 10, as applicable, the secured creditor taking a subsequent fixed charge over the same collateral shall be deemed to have notice of such provision.

49. **Priority of security interest in a negotiable instrument.**—(1) A security interest in a negotiable instrument that is perfected by possession has priority as against a security interest in a negotiable instrument that is perfected other than by possession pursuant to sub-section (3) of section 14.

(2) A security interest in a negotiable instrument is sub-ordinate to the rights of a holder in due course as defined in section 9 of the Negotiable Instruments Act, 1881 (XXVI of 1881).

***Illustration***

(a) Secured Creditor A has a security interest in a negotiable instrument issued in favour of Customer B (an entity) that was perfected by possession on the 25th December.

Secured Creditor C has a hypothecation on all the present and after-acquired movable property (including right to payment under negotiable instruments) of Customer B that was perfected by registration on the 1st December.

Secured Creditor A shall have priority over Secured Creditor C.

(b) Secured Creditor A has a security interest in a negotiable instrument of Customer B (a company) that was perfected by possession on the 25th December.

Secured Creditor C has a floating charge on Customer B's present and after-acquired inventory that was perfected by registration on the 1st December. Secured Creditor C's floating charge extends to proceeds, *i.e.* sale proceeds of inventory that may be in the form of a negotiable instrument of which the Secured Creditor C will have no possession.

Secured Creditor A shall have priority over Secured Creditor C.

## CHAPTER III

## TAKING FREE OF SECURITY INTEREST

50. **Purchaser taking free of security interest.**—(1) A purchaser for value will acquire collateral (other than a negotiable instrument or collateral covered by title document) free of any security interest, where the customer—

(a) sells the collateral in ordinary course of business, provided that the customer shall not conduct a bulk sale of collateral without the prior written consent of the secured creditor.

*Explanation:* Unless otherwise provided in the security agreement, a bulk sale shall mean any transfer of all or major part of the collateral of a customer or of the collateral held at a particular place of business of a customer; or

(b) is authorized in writing by the secured creditor to sell the collateral free of the security interest.

(2) A purchaser for value shall not acquire collateral free of security interest under clause (a) of sub-section (1) if, at the time of the acquisition, the purchaser has actual knowledge that the sale of the collateral is prohibited under the security agreement.

51. **Rights of a lessee and licensee.**—(1) The rights of a lessee and licensee in the collateral are not affected by a security interest where the customer—

(a) leases or licenses the collateral in ordinary course of its business; or

(b) is authorized in writing by the secured creditor to lease or license the collateral.

(2) Clause (a) of sub-section (1) shall not apply if, at the time of the conclusion of the lease or licence agreement, the lessee or licensee has actual knowledge that the lease or licence of the collateral is prohibited under the security agreement.

52. **Transferee of funds held in a deposit account taking free of security interest.**—Where the customer has initiated a transfer of funds from a deposit account that is subject to a security interest, the transferee of the funds takes the funds free of any security interest unless the transferee had actual knowledge that the funds transfer is prohibited under the security agreement.

## PART VI

## ASSIGNMENT OF RECEIVABLES

53. **Assignment of receivables by way of security and absolute.**—(1) An assignor may for value assign its rights, title, interests and benefits in receivables to an assignee in writing.

(2) An assignment of receivables may be absolute or by way of security for the performance of the customer's obligations.

(3) Upon an assignment of receivables under sub-section (1), —

(a) the rights and remedies of the assignor, whether by damages or otherwise, shall vest in the assignee; and

(b) the assignee may sue or institute proceedings in respect of the assignment of receivables in his own name without obtaining the assignor's consent to such suit or proceedings and without making him a party thereto.

(4) Notwithstanding section 5 of the Transfer of Property Act, 1882 (IV of 1882), an assignment of receivables may be of future receivables and such future receivables shall vest in the assignee on the acquisition of the receivables by the assignor.

*Explanation.*—Future receivables are receivables that are generated as a result of a contract that is concluded after the conclusion of the agreement assigning the receivables.

(5) If the receivables to be assigned are secured by movable property, then, unless otherwise agreed between the assignor and assignee, such security shall stand automatically transferred to and vest in the assignee upon assignment.

(6) The rights of an assignee in respect of the assigned receivables are subject to —

(a) all defences and right to set-off arising from the original contract between the account debtor and the assignor that the account debtor could have asserted against the assignor:

Provided that the assignee shall, unless otherwise agreed with the assignor, be entitled to recover from the assignor, any loss suffered by it as a result of the account debtor exercising any such defences and right to set-off; and

(b) any rights to set-off that the account debtor could have asserted against the assignor in respect of claims against the assignor accruing before the account debtor received notice in writing of the assignment.

(7) Sub-section (6) shall not apply if the account debtor has agreed in writing with the assignor that it shall not assert any defences or right to set-off.

54. **Assignment of receivables by way of security.**—(1) The provisions of Part II, III, V, VII, VIII and IX of this Act shall apply *mutatis mutandis* to an assignment of receivables by way of security.

(2) An account debtor shall be bound by the terms and conditions of the assignment of receivables by way of security, provided the account debtor has received notice in writing of such assignment in terms of sub-section (3) or has consented to the assignment of receivables in writing.

(3) The notice to be given under sub-section (2) to the account debtor may be given by the assignor or assignee and shall at the minimum.

(a) state name and address of the assignor;

(b) state name and address of the assignee; and

(c) identify the receivables assigned.

(4) Unless otherwise provided in the security agreement, if the receivables assigned by way of security are received by the assignor or recovered by the assignee, it shall be applied in the following order:

(a) in or towards payment of the cost of such recovery;

(b) in or towards the satisfaction of the amount of the security interest; and

(c) the residual, if any, to the assignor or any other person entitled to receive the same.

55. **Absolute assignment of receivables.**— (1) An account debtor shall be bound by an absolute assignment and have a duty to make payment to the assignee where the account debtor has received notice in writing of such assignment in terms of sub-section O or has consented to the assignment of receivables in writing.

(2) The notice to be given under sub-section (1) to the account debtor may be given by the assignor or assignee and shall at the minimum—

(a) state name and address of the assignor;

(b) state name and address of the assignee;

(c) identify the receivables assigned; and

(d) require the account debtor to pay the assignee in accordance with payment instructions stated therein.

(3) If an account debtor has not been given notice, under sub-section (1), of the absolute assignment of receivables, he shall be entitled to make payments to the assignor in respect of the assigned receivables in accordance with the original contract between the account debtor and the assignor and such payment shall fully discharge the account debtor:

Provided that payment made to the assignor in respect of such receivables shall be held in trust for the benefit of the assignee and the assignor shall forthwith make payment of such amount to the assignee or its agent duly authorised in this behalf, unless otherwise agreed between the assignor and assignee.

(4) Nothing in this Act shall prejudice an assignee's right to enforce an absolute assignment of receivables without the intervention of the courts.

**56. Applicability of the Transfer of Property Act, 1882 (IV of 1882).**— Sections 130, 131, 132 and 134 of the Transfer of Property Act, 1882 ( IV of 1882) shall not apply to an assignment of receivables under this Act.

## PART VII

## ENFORCEMENT OF SECURITY INTERESTS

57. **Modes of enforcement.**—A secured creditor may, after an occurrence of an event of default, enforce a security interest in accordance with section 58 or 59.

58. **Recovery suit.**—(1) A secured creditor may enforce a security interest by filing a recovery suit against the customer in the Banking Court.

(2) The provisions of the Recovery Ordinance shall apply *mutatis mutandis* for the purposes of filing a recovery suit against the customer.

*Explanation.*—The provisions of the Recovery Ordinance relating to the enforcement of a mortgage over immovable property shall not be applicable.

59. **Other enforcement modes.**—(1) A secured creditor may enforce the following security interests without the intervention of the courts:

(a) a pledge;

(b) an assignment of receivables by way of security;

(c) a security interest in a negotiable instrument that is perfected by possession;

(d) a security interest in a right to payment of funds credited in a deposit account that is perfected by control;

(e) a security interest in a motor vehicle based on retention of title arrangement; and

(f) a security interest in a title document that is perfected by possession.

(2) At any time after a secured creditor decides to enforce a pledge after an occurrence of an event of default, the secured creditor may give a written notice of demand to the customer in writing and require the customer to satisfy his obligation within fourteen days from the date of receipt of the notice. The notice shall give details of the amount payable by the customer and specify the collateral that may be enforced in the event of the customer failing to satisfy his obligation:

Provided that the secured creditor may dispense with such notice if—(a) in the reasonable opinion of the secured creditor, the collateral is in danger of being

wasted, misappropriated or is perishable; or (b) the amount of finance exceeds ten million rupees and the security agreement provides for such dispensation.

(3) The right to enforce an assignment of receivables by way of security and a security interest in a negotiable instrument in terms of this section includes the right to enforce any security over movable property or a mortgage of immovable property by deposit of title deeds as provided in sub-section (f) of section 58 of the Transfer of Property Act. 1882 (IV of 1882) that secures the payment of the receivables or the negotiable instrument.

(4) In case of a security interest in a right to payment of funds credited in a deposit account, the secured creditor shall —

(a) where such secured creditor is the depository bank, be entitled to appropriate and set-off the funds credited in the deposit account against the customer's obligation; or

(b) where such secured creditor is not the depository bank, be entitled to instruct the depository bank to pay the funds credited in the deposit account to or for the benefit of the secured creditor in terms of the control agreement.

(5) Nothing in this Act shall prejudice a secured creditor's right to enforce a security interest without the intervention of the courts under any other law for the time being in force.

60. **Enforcement where collateral is in the nature of property attached to immovable property.**—(1) If the collateral is in the nature of property attached to immovable property, the secured creditor may, upon enforcement of the security interest in accordance with the provisions of this Part, remove such property and shall reimburse the mortgagee or owner of the immovable property to which such property is attached for the cost of repair of any damage to the immovable property resulting from the removal:

Provided that the secured creditor shall not be required to reimburse the mortgagee or owner of the immovable property for any reduction in value of the immovable property resulting from the removal of the property attached to immovable property.

(2) The secured creditor shall be entitled to recover from the customer any expenses incurred by him for the purposes of removing the property attached to immovable property.

61. **Fresh election of directors on request of the secured creditor.**—Notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984), where a secured creditor acquires twenty percent or more of the voting securities of a company in his own name upon enforcement of a pledge of securities, he may require the company to hold a fresh election of directors in accordance with the procedure laid down in section 178 of the Companies Ordinance, 1984 (XLVII of 1984) within sixty days of the secured creditor requesting the same.

## PART VIII

## RIGHTS AND OBLIGATIONS OF SECURED CREDITOR AND CUSTOMER

62. **Duties of customer in case of a non-possessory security interest.**—(1) A customer shall exercise as much care in the custody, preservation, operation, maintenance, use or other enjoyment or exploitation of collateral in the customer's possession as a man of ordinary prudence would as if the collateral had been free of any security interest and shall not take any action, directly or indirectly, that may waste, misappropriate or otherwise prejudice the value of the collateral.

(2) A customer shall be liable to the secured creditor for any loss or damage to the collateral as a result of a breach of the obligations under sub-section (1).

(3) Subject to the terms of the security agreement, the secured creditor and its agents shall have the right to inspect, value, insure, superintend, take samples and particulars of the collateral and to check any statements, accounts, reports and information pertaining to the collateral.

63. **Duties of secured creditor in case of a pledge and security interest in collateral covered by a title document.**—Sections 150, 151, 152, 153, 154, 155, 156, 157. 173 and 175 of the Contract Act, 1872 (IX of 1872) shall apply *mutatis mutandis* to a secured creditor in the case of a pledge or a security interest in collateral covered by a title document.

64. **Material information from secured creditor.**—(1) The customer may send a written demand to the secured creditor to provide material information in respect of a security interest.

(2) A secured creditor shall, upon receiving a written demand under sub-section (1), provide the material information to the customer within fourteen days of receiving the demand.

(3) A secured creditor may charge the customer a reasonable fee for responding to a written demand under sub-section (1) provided that such fee shall not exceed the cost of processing such demand.

(4) For the purposes of this section, material information shall mean—

(a) a copy of the security agreement and any amendments thereto;

(b) a statement in writing of the amount of the aggregate outstanding obligation of the customer secured by the collateral as of the date specified in the written demand under sub-section (1); and

(c) a statement in writing that approves or corrects an itemized list of what the customer believes to be the collateral securing an obligation as of the date specified in the written demand under sub-section (1) and duly authenticated by the customer.

## PART IX

## MISCELLANEOUS PROVISIONS

65. **Notice.**—(1) A notice or demand required to be given pursuant to any provision in Part IV of this Act may be given to the secured creditor or entity, as applicable, through courier or registered post with acknowledgement due at the address provided in the registered financing statement.

(2) A notice or demand given in accordance with sub-section (1) shall be deemed to have been given and received —

(a) on the day of actual delivery, where the notice is sent by a courier; or

(b) four days after the notice has been posted, where the notice is sent by registered post with acknowledgement due.

(3) The registrar may prescribe by regulations additional modes of providing a notice or demand to the secured creditor or entity, as applicable, pursuant to any provision in Part IV of this Act and matters ancillary thereto.

66. **Provisions of insolvency laws not affected.**—(1) If a customer becomes insolvent, the same rules shall prevail and be observed with regard to the priority of debts upon the distribution of the insolvent customer's estate, the respective rights of the secured and unsecured creditors and to debts provable as are in force for the time being under the applicable insolvency laws:

Provided that a secured creditor shall have the right to stand outside insolvency proceedings and enforce his security interest for the repayment of finance and such right shall, save as is provided in sub-section (2), not be subject to any preferential

claim, whether arising before or after the creation of the security interest, by any person or authority.

(2) Preferential claims by any person or authority shall have priority over the claim of a secured creditor having a floating charge, so far as the assets of the customer available for payment of unsecured creditors are insufficient to meet such preferential claims.

*Explanation.*—For the purposes of sub-section (2), a fixed charge created upon crystallization of a floating charge shall be treated as a floating charge.

67. **Protection of action taken in good faith.**—No suit, claim or other legal proceedings shall lie against the Registry or the registrar, deputy registrar or officers, staff and other employees of the Registry in respect of anything which is done or omitted to be done in good faith under this Act or any rules and regulations made thereunder.

68. **The provisions of this Act to override other laws.**—(1) The provisions of this Act shall be in addition to, and not, save as expressly provided in this Act, in derogation of any other law for the time being in force.

(2) In the event of any inconsistency or conflict between the provisions of this Act and any other law for the time being in force including but not limited to the Companies Ordinance, 1984 (XLVI I of 1984), Recovery Ordinance, Contract Act 1872 (IX of 1872), Transfer of Property Act, 1882 (IV of 1882), Specific Relief Act, 1877 (I of 1877), Sale of Goods Act, 1930 (III of 1930), and General Clauses Act, 1897 (X of 1897), the provisions of this Act shall prevail.

69. **Power to remove difficulties.**—If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, by order published in the official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing such difficulty.

70. **Power to make rules.**—(1) The Federal Government may, by notification in the official Gazette. make rules, not inconsistent with the provisions of this Act, for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the power in sub-section (1). the Federal Government may make rules in respect of the following matters, namely:—

(a) the forms of the statements to be used for the registration of security interests under Part IV of this Act, instructions for filling in such statements and ancillary matters in respect thereof;

(b) description of collateral to be included in the security agreement under clause (c) of sub-section (2) of section 6;

(c) the terms and conditions of the appointment and service of the registrar, deputy registrars, officers, staff and other employees of the Registry; and

(d) any other matter which has to be, or may be, prescribed by rules.

71. **Public Servants.**—(1) The registrar, deputy registrars, officers, employees of the Registry and other persons authorized to perform or exercise any function or power under this Act or rendering services to the Registry as consultant or adviser shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

(2) Save as otherwise provided by this Act and only for the purposes so provided, nothing herein contained shall be construed to mean that any person referred to in sub-section (1) is or shall be deemed to be in the service of Pakistan or is to be regarded or treated as a civil servant.

72. **Power to make regulations.**—(1) The registrar may, by notification in the official Gazette, make regulations, not inconsistent with the provisions of this Act and the rules made thereunder, for carrying out the purposes of Part IV of this Act.

(2) In particular, and without prejudice to the generality of the power in sub-section (1), the registrar may make regulations in respect of the following matters, namely:—

(a) amount and mode of payment of fees payable for filing statements in the register, searching the register and other services to be rendered by the Registry under Part IV of this Act as are commensurate with the cost of providing such services;

(b) form and manner in which applications to the registrar under the provisions of Part IV are to be submitted and ancillary matters in respect thereof;

(c) modes of providing a notice or demand to the secured creditor or entity, as applicable, pursuant to any provision in Part IV and ancillary matters in respect thereof;

(d) procedure and terms and conditions for the use of the electronic register under sub-section (4) of section 21;

(e) procedure and requirements for searching the register under section 33 and ancillary matters in respect thereof; and

(f) any other matter relating to registration of security interests under Part IV of this Act which has to be, or may be, prescribed by regulations.

73. **Transitional provisions.**—(1) For the purposes of this section,—

(a) "prior security interest" means a security interest created or provided for by a security agreement or other transaction entered into by an entity before the commencement of this Act;

(b) "prior law" means any law, whether statutory, equitable or common law, that was in force before the commencement of this Act;

(c) "transitional period" means the period of six months after the notification of establishment of the Registry is published by the Federal Government in terms of sub-section (1) of section 19.

(2) Secured creditors may perfect prior security interests in accordance with this Act during the transitional period.

(3) Upon perfection under sub-section (2), a prior security interest shall retain priority from the date it was perfected under prior law and shall have priority over a security interest created and perfected after the commencement of this Act.

(4) If a prior security interest is perfected after the transitional period, such prior security interest shall be deemed to have priority from the date of actual perfection in the event of a conflict with a security interest created and perfected after the commencement of this Act or a prior security interest perfected during the transitional period.

(5) Nothing in this Act shall prejudice a security interest created and perfected by a company before the commencement of this Act and such security interest shall continue to be governed by prior law.

SYED MUSSARRAT ABBAS SHAH,
*Acting Secretary.*

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