PARLIAMENT OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF

SRI LANKA

—————————

SECURED TRANSACTIONS

ACT, NO. 49 OF 2009

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[Certified on 25th September, 2009]

Printed on the Order of Government

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[Certified on 25th September, 2009]

L. D.—O. 29/2008.

AN ACT TO PROVIDE FOR THE SECURING OF OBLIGATIONS IN RESPECT OF

MOVABLE PROPERTY, MAINTENANCE OF A SECURED TRANSACTIONS

REGISTER; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL

THERETO.

BE it enacted by the Parliament of the Democratic Socialist

Republic of Sri Lanka as follows:—

1. This Act may be cited as the Secured Transactions Short title and

Act, No. 49 of 2009 and shall come into operation on such date of

date as the Minister may appoint by Order published in the operation.

Gazette (hereinafter referred to as the “appointed date”).

PART I

APPLICATION OF THE LAW

2. Notwithstanding anything contained in any other Scope of the

law any person who— Act.

(a) pledges, enters into a purchase agreement,

conditional transfer, finance leasing agreement or

mortgage of any movable property, assignment of

accounts or other rights of payment of consignment;

(b) enters into an agreement for sale of accounts and

chattel paper;

(c) enters into a lease agreement in respect of a movable

property for a period exceeding one year;

(d) gives any undertaking in terms of section 2 of the

Inland Trust Receipts Act, No. 14 of 1990; or

(e) gives any undertaking of any consignment of goods

imported into Sri Lanka in terms of section 2 of the

Trusts Receipts Ordinance (Chapter 86),

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may secure such pledge, mortgage or obligation, as is

specified in items (a), (b), (c), (d) or (e) with a collateral in

accordance with the provisions of this Act:

Provided however the application of the provisions of

this Act shall not depend on the ownership of the collateral:

Provided further the period of such obligation shall extend

for a period exceeding one year.

Exemption from 3. The following transactions shall be exempt from the

the application application of the provision of this Act:—

of this Act.

(a) the transfer of a claim for compensation of an

employee;

(b) the sale of accounts or chattel papers arising out of

a part of a sale of a business;

(c) the assignment of accounts or chattel paper

instrumental for the purpose of collection only;

(d) an obligation under a contract to assign the right of

payment to an assignee; and

(e) the transfer of an interest in goods held by the debtor

as equipment or consumer goods, where the goods

are registered under the Motor Traffic Act, No. 8 of

2009, Sri Lanka Ports Authority Act, No. 52 of 1979,

the Merchant Shipping Act, No. 52 of 1971, the

Civil Aviation Authority Act, No. 34 of 2002,

respectively.

Objective. 4. The objective of the Act is to promote the interest of

the national economy and economic activity in accordance

with the provisions of this Act and regulations made

thereunder, by securing a pledge, mortgage or obligation

specified in section 2 of this Act by utilizing collateral

recognized by sections 2 and 3, in the manner specified.

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5. Any mortgagor, pledgor, conditional transferor, lessor Validity of a

or assignor may accept a collateral for securing such secured interest.

mortgage, pledge, conditional transfer, financial lease or

assignment:

Provided however no such person shall accept any secured

interest other than a secured interest in the purchase money

of consumer goods belonging to the debtor:

Provided further such security interest may not be deemed

to be invalid due to the rights enjoyed by the debtor to use,

sell, exchange or otherwise dispose of such security.

6. Any interest in a collateral offered by a debtor to More than one

secure an obligation, may be utilized to secure more than obligation may

be secured by

one obligation. the same

collateral.

PART II

SECURED TRANSACTIONS

7. (1) There shall be maintained a Secured Transactions Maintenance of

Register (hereinafter referred to as the “Register”) which Secured

Transaction

shall for the purposes of this Act be maintained by the Credit

Register.

Information Bureau of Sri Lanka established under the Credit

Information Bureau of Sri Lanka Act, No. 18 of 1990. In

addition to the powers specified in the said Credit

Information Bureau of Sri Lanka Act, the Bureau shall have

the following powers, duties and functions:—

(a) to maintain in the manner as prescribed the Register

of Secured Transactions and the process of

registration of security interest of movables in such

Register;

(b) to register a notice of a security interest in collateral

filed by any person specified in item (a), (b), (c), (d)

and (e) of section 2;

(c) to register a notice of interest of a judgment-

creditor; and

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(d) to maintain records of all expired notices for a

period of ten years from the date of expiry thereof.

(2) The powers, duties and functions in relation to

registration of security interest of movables shall be carried

out by the officers and servants of the Bureau under the

directions of the Board of Directors of the Credit Information

Bureau of Sri Lanka appointed under section 5 of the Credit

Information Bureau of Sri Lanka Act, No. 18 of 1990 :

Provided that in carrying out the powers, duties and

functions in relation to registration of the security interest

of movables such officers and servants shall be subject to

such regulations and rules as may be made from time to time

as provided for under this Act.

Duties of the 8. (1) Each notice filed of record, shall be entered in the

Filing Office. Register maintained in terms of section 7 by the Credit

Information Bureau of Sri Lanka, and shall be—

(i) assigned a unique file number, in all instances where

it is an initial notice;

(ii) assigned a number to every notice (not being the

initial notice);

(iii) used to create a record that bears the number

assigned to the filed record and the date and time of

filing; and

(iv) open for inspection by the public.

(2) The Register shall contain an index of every initial

notice by the name of the debtor and shall index all filed

records relating to an initial notice in a manner that associates

the initial notice.

(3) The Register shall be maintained in such a manner so

as to be able to retrieve a record by the name of the debtor

and by the file number assigned to the initial notice to which

the record relates and other related records.

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(4) The Register shall contain records of lapsed notices

for a period of ten years beyond the date on which it has so

lapsed.

(5) The acceptance or refusal to register a notice shall

not affect the accuracy, authenticity or validity of any

information contained in the notice.

9. (1) The Credit Information Bureau of Sri Lanka may Information

furnish the following information to any person who may from Credit

Information

apply to the office for the same:— Bureau Office of

Sri Lanka.

(i) information regarding the availability of a debt

secured by a collateral in respect of a secured party

and the details of such debtor and the collateral as

at a given date and time;

(ii) information relating to the file number and the date

and time of filing of the notice to which the request

relates;

(iii) information contained in each notice, to which the

request relates.

(2) When forwarding an application for inspection to

the Credit Information Bureau of Sri Lanka, the applicant

shall furnish the following information relating to the

debtor:—

(i) the national identity card number of a debtor who

is a natural person and a citizen of Sri Lanka and in

the case of a body corporate the registered number

applicable thereto;

(ii) the name of the debtor if such debtor is a body

corporate and a citizen of Sri Lanka;

(iii) where available the file number of the notice; and

(iv) the reasons why such information is required.

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(3) The Credit Information Bureau of Sri Lanka may

communicate information in any language:

Provided that, if requested, the Credit Information Bureau

of Sri Lanka shall issue a Certificate containing details of

the information requested in the prescribed form signed by

an officer authorized in that behalf and such certificate shall

be admissible in evidence and shall be prima facie evidence

of the facts stated therein.

All documents 10. (1) Every document entered in the Register shall be

entered in the deemed to be a public document.

Register to be

public

documents. (2) Any person who requires information in respect of a

collateral relating to a secured transaction shall have the

right to inspect and obtain copies of any document filed

with the Credit Information Bureau of Sri Lanka upon the

payment of a prescribed fee.

Contents of 11. (1) Every initial notice shall contain—

initial notice.

(i) the national identity card number of a debtor and

the name of the debtor with a mailing address within

Sri Lanka and in the case of a body corporate the

registration number applicable thereto;

(ii) the national identity card number of the secured

party or an agent authorized by the secured party in

writing and in the case of a body corporate the

registration number applicable thereto and the

mailing address within Sri Lanka of the secured

party or of such agent or of the body corporate;

(iii) a description of the collateral covered by the notice;

and

(iv) any other prescribed information required to assess

the creditworthiness of any person specified in

section 2 of this Act:

Provided however, a notice shall, if such collateral covers

future expectations of fixtures, contain a description of the

relevant movable property.

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(2) A person who secures an obligation with a collateral

shall be entitled to file an initial notice only where the debtor

authorizes the filing of such notice. Such authorization shall

however not form part of the notice.

(3) Any debtor specified in section 2 of this Act shall

authorize the filing of an initial notice covering the collateral

specified in the security agreement and the proceeds, if any,

of the collateral , by signing the agreement which he entered

into irrespective of the period covered by such agreement.

(4) An initial notice may be filed before entering into a

secured transaction.

12. (1) Notwithstanding anything contained in any Name of the

other law, a notice shall be valid and effective if it clearly debtor and

secured party.

provides in the case of—

(i) the debtor being a person, the name and the national

identity card number of such person;

(ii) the debtor being natural person and not a citizen of

Sri Lanka the name of the person as specified on

such person’s passport and the place of issue of the

passport;

(iii) the debtor not being a natural person and is

registered under the Companies Act or otherwise

recognized as a person in terms of any other law of

Sri Lanka, the name of the debtor as specified on

the Register maintained at the Registrar of

Companies or the name recognized under any other

law of Sri Lanka;

(iv) the debtor being a foreigner other than a natural

person, qualified to do business under the

Companies Act, the name of the debtor as specified

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on the Register maintained at the Registrar of

Companies; or

(v) the debtor being a person other than a person

specified in paragraph (iv) of this section, the name

of the debtor as specified on the appropriate registry

in the country where the foreign person is registered.

(2) When a notice provides the name of the debtor

accurately, absence of a trade name or other name of the

debtor shall not make such notice invalid:

Provided that such notice shall be invalid if the notice

fails to specify accurately the name of the debtor.

(3) A person may provide in a notice the names of more

than one debtor and the name of more than one secured

party.

(4) Failure to specify the status of a person as an agent of

a secured party shall not invalidate such notice.

PART III

AMENDMENT, CONTINUATION AND TERMINATION OF THE NOTICE

Effect of 13. (1) Where an obligee waives the requirement of

changes. collateral while its security interest or the obligation remains

in force, the initial notice filed of record shall continue to be

valid and effective, notwithstanding the fact that the

knowledge or consent of the secured party may or may not

have been obtained for such waiver.

(2) Where a notice filed of record becomes misleading

due to change of the name of the debtor, the notice shall be

valid and effective in order to perfect a security interest in

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collateral acquired by a debtor within four months from the

change of name of the debtor:

Provided however such notice shall be valid and effective

to perfect a security interest acquired by the debtor after four

months from the date of change of the name, if such change

is brought to the notice of the Credit Information Bureau of

Sri Lanka within four months from the date of such change.

(3) A notice remains valid and effective after the change

of the name of the debtor unless due to change of

circumstances the notice fails to contain an accurate

description of the details of the debtor.

14. (1) Every notice filed under this Act shall be valid Validity of a

for a period of five years from the date of filing unless the notice.

period of validity is extended by the filing of a continuation

statement.

(2) Upon the expiration of the validity of a notice, the

security interest perfected by such notice shall become

invalid unless the security interest is perfected without the

filing of a notice.

(3) If the security interest becomes invalid upon the

expiration of the validity of such notice it shall be deemed

never to have been perfected against a prior or subsequent

purchaser of a collateral for value.

15. (1) An initial notice may be amended by making Amendment of

one or more amendments. An amendment shall— notice.

(i) identify the initial notice by the unique file number

allocated to such notice;

(ii) specify the name of the secured party on the notice

and the name of the person who authorizes the

amendment;

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(iii) indicate that it is an amendment to the notice; and

(iv) provide all the relevant information required of an

initial notice, in a manner that reflects the amended

state of the notice.

(2) Where an amendment makes an addition to the

collateral covered by a notice, or a debtor to a notice, such

amendment shall be effective if the debtor authorizes in

writing, the filing of such amendment.

(3) Where there is more than one secured party specified

on the notice, the amendment shall be valid if one secured

party authorizes in writing, the filing of such amendment.

(4) An amendment made for the addition of a collateral

to the notice shall be valid with respect to the collateral so

added, only from the date of the filing of such amendment.

(5) An amendment made for the addition of a name of a

debtor to the notice shall be valid with respect to the debtor

so added, only from the date of the filing of the amendment.

(6) Where a secured party specified on the notice

authorizes in writing the filing of an amendment, such an

amendment other than an amendment to add a collateral or

add a debtor shall be valid.

(7) An amendment shall be invalid where it deletes all

names of secured parties without providing a name of a new

secured party, or deletes the name of a debtor and fails to

provide a name of a debtor not previously specified on the

notice.

(8) Where there is more than one secured party on a

notice, each secured party may be required to authorized the

filing of an amendment.

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(9) Subject to the provisions of section 11, the period of

validity of a notice, shall not be extended or deemed to be

extended due to filing of an amendment.

16. (1) The period of validity of a notice may be Continuation of

notice.

extended by filing a continuation statement that—

(i) identifies the initial notice by its unique file

number;

(ii) identifies a secured party on the notice who

authorizes the continuation statement; and

(iii) indicates the extension of the validity of the notice,

with respect to the secured party who authorized

the filing.

(2) A continuation statement may be filed within six

months prior to the expiration of the five year period of the

notice, and upon filing of a continuation statement within

the period specified herein, the validity of the notice shall

continue for a further period of five years commencing from

the date on which the notice would have become invalid.

(3) Upon the expiration of the extended period of five

years as specified in subsection (2), the validity of such

notice shall lapse unless prior to the expiration of the validity

another continuation statement authorized by that secured

party is filed. The validity of a notice shall thereupon

continue only with respect to the secured party who

authorized the filing of the continuation statement.

(4) Succeeding continuation statements may be filed in

the same manner to continue the validity of the notice.

17. (1) The validity of a notice may be terminated by Termination of

filing a termination statement in the prescribed form. notice.

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(2) Upon the receipt of a written demand from a debtor,

the secured party may file a termination statement if there

is—

(a) no outstanding secured obligation;

(b) no commitment to make an advance; and

(c) written authorization for the filing of a notice by

debtor.

Effectiveness 18. (1) An initial notice, amendment, continuation

of notice. statement, or termination statement, shall be deemed to be

valid from the date of registration and inclusion in the

Register.

(2) The Credit Information Bureau of Sri Lanka may

refuse to accept any document for registration—

(i) where such document is an initial notice and such

notice fails to provide the name of a debtor;

(ii) where such document is an amendment and the

record fails to provide the name of a debtor;

(iii) where such document is a continuation statement

and the record fails to provide the file number of

the initial notice or has failed to deliver the same

within a period of six months from the date of expiry

of the first initial notice;

(iv) where such document is a termination statement

and the record fails to provide the file number of

the initial notice or the notice has lapsed with

respect of each secured party who’s name is

specified in the notice; and

(v) where the obligor has failed to pay the required fee

or no arrangement has been made for the periodic

payment of fees.

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(3) Where Credit Information Bureau of Sri Lanka refuses

to accept a record for reasons other than the ones set out in

this Act, such record shall be valid as filed of record except

against in the purchase of collateral that gives the value in

reasonable reliance upon the absence of the record from the

files.

(4) Where the Credit Information Bureau of Sri Lanka

refuses to accept a record for filing, it shall promptly

communicate such fact with reasons, if any for its refusal, to

the person who presented the record.

(5) A notice authorized by one secured party on the notice

shall not affect the rights of another secured party on the

notice.

19. (1) A person who has reasons to believe that the Claim

name of the person is inaccurate or wrongfully specified in concerning

inaccurate or

the initial notice he shall forthwith take steps to bring such wrongfully filed

fact to the notice of the Credit Information Bureau of Sri notice.

Lanka, and the Bureau shall upon consideration of the matter

correct the name accordingly.

(2) A correction statement may—

(a) identify the record to which it relates by the file

number assigned to the initial notice;

(b) indicate that it is a correction statement;

(c) give reasons for the basis of the belief that such

statement is inaccurate and the manner of

rectification of such statement; and

(d) indicate that the notice covers accounts or chattel

paper that have been sold but as to which the debtor

or other person obligated has discharged its

obligation.

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(3) A termination statement effectively terminates the

interest of a secured party on the notice, only if the

termination statement is authorized in writing by that secured

party. Upon the filing of an effective termination statement,

the notice to which the termination statement relates

becomes ineffective with respect to the authorizing of the

secured party.

Registration of 20. (1) The Credit Information Bureau of Sri Lanka

notice &c,. shall cause the registration of any notice, an amendment,

continuation statement or termination statement.

(2) The registration with the Credit Information Bureau

of Sri Lanka shall provide the final and conclusive evidence

regarding availability or non-availability of a mortgage in

respect of a collateral.

(3) Where the Credit Information Bureau of Sri Lanka

refuses to register any notice, amendment, continuation

statement or termination statement, it shall communicate

the reasons in writing to the person who applies for such

registration.

(4) A notice authorized by one secured party on the notice

and filed of record shall not affect the rights of another party.

(5) Any person who notifies that the notice filed of record

contains erroneous information, he shall file a document

rectifying such error forthwith.

Duty to give 21. (1) It shall be the duty of the Credit Information

information. Bureau of Sri Lanka to furnish prescribed information to

any person in relation to any notice filed therein.

(2) The Credit Information Bureau of Sri Lanka may issue

a Certificate in the prescribed form containing the required

information and maintain documents in the manner specified

in the rules.

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PART IV

MISCELLANEOUS

22. (1) The Credit Information Bureau of Sri Lanka may Rules.

make rules in respect of the procedure relating to

administration, management, maintenance of documents and

procedure to be followed in the transaction of business in

terms of this Act.

(2) Every rule made by the Credit Information Bureau of

Sri Lanka shall be published in the Gazette.

23. (1) The Minister may make regulations for the Regulations.

purpose of carrying out or giving effect to the principles and

provisions of this Act or in respect of matters for which

regulations are required or authorized by this Act to be made

including the following:—

(i) the amount of the fees to be charged for services

rendered and the manner of collecting such fee

including the manner of carrying out the function

of maintaining the Register in terms of section 7

and the matters to be included in such Register;

(ii) the manner to conduct searches including the

manner to use electronic records;

(iii) form for the submission of notices and information

required;

(iv) particulars of the judgment creditor and the details

of the movable property, identification details of

the person owing payment or performance of the

judgment creditor, details and the notice of security.

(2) Every regulation made by the Minister shall be

published in the Gazette and shall come into operation on

the date of such publication or on such later date as may be

specified, therein.

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(3) Every regulation made by the Minister, shall as soon

as convenient after the date of its publication in the Gazette,

be brought before the Parliament for approval. Any regulation

which it is not so approved shall be deemed to be rescinded

from the date of disapproval, but without prejudice to

anything previously done thereunder.

(4) Notification of the date on which any regulation is

deemed to be so rescinded shall be published in the Gazette.

Sinhala text 24. In the event of any inconsistency between the

to prevail in Sinhala and the Tamil texts of this Act, the Sinhala text shall

case of

prevail.

inconsistency.

Interpretation. 25. For the purposes of this Act, unless the context

otherwise requires—

“assignment” means the transfer from one person to

another, in whole or in part, of any right in an

account, chattel paper, document, instrument, or

other right to payment;

“chattel paper” means a record that creates a debt and

a security interest in, or a lease of, goods;

“credit Information Bureau of Sri Lanka” means the

Credit Information Bureau of Sri Lanka

established under section 2 of the Credit

Information Bureau of Sri Lanka Act, No. 18 of

1990;

“collateral” means the property subject to a security

interest, and may include movable things of any

nature, intangible things of any nature, farm

products, fixtures, timber to be cut, and minerals

to be extracted, and includes collateral that arises

in the future, and collateral located in or outside

of Sri Lanka, accounts and chattel paper that have

been sold, leased goods, and proceeds;

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“judgment creditor” means—

(i) a person who obtains a right in a secured

party’s collateral, or a right to seize a secured

party’s collateral, by order of a court or by any

authority under prevailing law, other than the

Inland Revenue Act, No. 10 of 2006;

(ii) the liquidator under the Companies Act, No.

7 of 2007;

(iii) the receiver under the Insolvency Ordinance

(Chapter 97); and

(iv) a preferential creditor;

“notice” means a record filed or presented for filing in

the Register maintained by the Credit Information

Bureau of Sri Lanka and includes an amendment,

continuation statement, and termination

statement that are filed or presented for filing. An

“initial notice” is the notice to which an

amendment, continuation statement, termination

statement, or correction statement may relate;

“National Identity Card” means the national identity

card issued under the provision, of the Registration

of Persons Act, No. 32 of 1968;

“proceeds” means—

(i) whatever is acquired upon the sale, lease,

license, exchange, or other disposition of

collateral;

(ii) whatever is collected on, or distributed with

respect to, collateral;

(iii) rights arising out of collateral;

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(iv) to the extent of the value of collateral, claims

arising out of the loss or non-conformity of,

defects in, or damage to the collateral; and

(v) to the extent of the value of collateral and to

the extent payable to the debtor or the secured

party, insurance payable by reason of the loss

or non-conformity of, defects in, or damage to

the collateral;

“secured party” means a lender, seller or other person

in whose favour a security interest is created under

a security agreement, including a person to whom

accounts or chattel paper have been sold, and a

lessor of goods;

“secured transaction” means any transaction specified

in section 2 of the Act;

“value” means the value that a person gives where the

person acquires the rights—

(i) in return for a binding commitment to give

credit, whether or not drawn upon; or

(ii) as security for, or satisfaction of, a pre-existing

claim, in whole or in part;

(iii) by accepting delivery pursuant to a pre-

existing contract for purchase; or

(iv) in return for anything given in exchange, for

promise.

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