

Secured Transactions Act, 2001

Acknowledgements

The Secured Transactions Act, 2001 was prepared by a team of individuals dedicated to recommending the needed legal reforms in order to improve access to credit for businesses. In addition, careful consideration has been given to offer a law that will promote commerce and establish rules to protect both creditors and debtors.

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to provide for the use of movable property to secure payment of debts.

Whereas it is expedient to provide for the use of movable property to secure payment of debts;

It is hereby enacted as follows:

Chapter I
Preliminary

- 1. Short title, commencement and application.** -- (1) This Act may be called the Secured Transactions Act, 2001.
 - (2) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.
 - (3) It shall apply to. –
 - (a) all transactions where the effect is to secure a debt with movable property, including pledge, hypothecation, hire-purchase, and leases as security;
 - (b) assignments of accounts and other rights to payment, and the sale of documents;
 - (c) leases of movable property other than leases as security whose term exceeds six months.
 - (4) This law applies to transactions, assignments, and leases described in subparagraph (3) regardless of the form or terminology of the agreement, whether legal title to charged property is in the secured party or the debtor.
- 2. Definitions.**- (1) In this Act, unless there is anything repugnant in the subject or context,-
 - (a) “purchase” means to take as a buyer, a donee, a person receiving security such as a creditor or mortgagee, or by any other voluntary transaction creating an interest in property;

- (b) “purchase money charge” means a charge that is—
- (i) taken or retained by the seller of goods to secure all or part of its price;
- or
- (ii) taken by a person other than the seller who, by providing credit or incurring an obligation, gives value to enable the debtor to acquire rights in or the use of goods, if such value is in fact so used;
- (c) "serial numbered vehicle" means the following, when held as equipment and not as stock in trade: a motor vehicle, a trailer, an aircraft, or a motorized boat.
- (d) “judgment creditor” means a creditor who has a right in movable property due to the action of a court;
- (e) "enlistment office" means the enlistment office established in section 27;
- (f) “record” means information that is inscribed in a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;
- (g) “charged property” means any movable property or fixtures subject to a charge;

Explanation: Charged property may be movable property of any nature, tangible or intangible, may arise in the future, may be located anywhere, within or outside of Bangladesh, may be leased goods, accounts and documents that have been or may be assigned, may be crops that are growing or which are to be planted, and may be proceeds to which a charge attaches;

- (h) “charge” means an *in rem* right in movable property that secures payment of a debt, including the interest held by a pledge, a hypothecate, the lessor under a lease as security, the lessor under a lease subject to this Act, and an assignee;
- (i) “charge agreement” means an agreement that creates or provides for a charge, whether or not it is called a charge agreement, including an agreement of assignment;
- (j) “bankruptcy receiver” means a receiver appointed by a court under the Bankruptcy Act, 1997 (X of 1997) or, if no receiver has been appointed in a bankruptcy case, the court;

- (k) “debtor” means the person who owes payment of a debt, whether or not the person owns or has rights in the charged property, and includes an assignor, the lessee of goods under a lease subject to this Act, and a person whose movable property secures an obligation, even if the person does not owe payment of a debt;
- (l) "prescribed" means prescribed by rules made under this Act;
- (m) “notice” means a record presented to the enlistment office, and includes records on file or presented for enlistment relating to the initial notice, unless the context indicates otherwise;
- (n) “goods” includes all tangible things that are movable at the time the charge attaches, whether or not they are or are intended to become fixtures, but does not include money, title deeds, transferable instruments, or documents.

Explanation I.- Minerals to which a charge is to attach as they are extracted, standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops shall be deemed to be goods within the meaning of this definition.

Explanation II.- For the purpose of this clause, "goods" shall include the following four categories of goods, namely:-

“consumer goods,” if they are not serial numbered vehicles and if they are used or bought for use primarily for personal, family, or household purposes;

“livestock,” if they are animals grown in the ordinary course of business by a debtor engaged in farming and while they are in the possession of the debtor;

“stock in trade,” if they are held by a person for sale or lease, or if they are raw materials for work in process, or materials used or consumed in a business; and

“equipment,” if they are not stock in trade, farm products, or consumer goods;

- (o) “proceeds” means whatever is acquired upon the sale, lease, license, exchange, or other disposal of charged property, whatever is collected on, or distributed on account of, charged property; rights arising out of charged property; to the extent of the value of charged property, claims arising out of the loss or nonconformity of, defects in, or damage to the charged property; and to the

extent of the value of charged property and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the charged property, and “cash proceeds” means proceeds that are money, checks, funds on deposit in banks, and the like;

- (p) “person” means an individual who has capacity to contract, or any entity recognized by the law of Bangladesh.
- (q) “lessee in the ordinary course of business” means a person who in good faith and without knowledge that the lease is in violation of the rights of a third party in the goods, leases in ordinary course of business from a person in the business of selling or leasing goods of that kind, either for cash or by exchange of other property, whether secured or unsecured;
- (r) “accession” means goods that are incorporated into other goods in a manner such that the identity of the original goods is not lost;
- (s) “document” means a writing or group of writings that evidences both a monetary obligation and a charge in, or a lease of, specific goods;
- (t) “commingled goods” means goods that are physically mixed with other goods in such a manner that their identity is lost in a product or mass;
- (u) “bona fide purchaser for value in ordinary course of business” means a person who in good faith and without notice or knowledge that a sale is in violation of the rights of a third party in goods, buys in ordinary course from a person in the business of selling goods of that kind;
- (v) “secured party” means a creditor, lender, seller or other person in whose favour a charge is created under a charge agreement, including a person to whom accounts or documents have been assigned, and a lessor of goods under a lease subject to this Act;
- (w) “fixtures” means goods that are, or are intended to become, attached to immovable property or fastened to anything attached to immovable property, in a manner that causes a property right to arise in the goods under any law relating to immovable property;
- (x) “assignment” means the transfer, in whole or in part, of any right in an account, document, title deed, transferable instrument, other intangible

property, or any other right to receive payment;

(y) “title deed” means a writing evidencing title to goods, or a bill of lading, dock warrant, warehouse receipt, or similar record issued by a person in the business of transporting or storing goods;

(z) “sign” means to execute or adopt a name or symbol, manually or otherwise, with present intent to identify the signing party or to adopt or establish the authenticity of a record;

Explanation:- "Sign" does not require a manual signature.

(aa) “transferable instrument” means a record that evidences a right to the payment of money, that is not a charge agreement or lease, which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment, including a check, money order, or certificated security;

(bb) “account” means any right to receive payment for goods sold, pledged, or leased or for services rendered;

(cc) “account debtor” means the person who is obligated on an account that has been assigned, or under the terms of a document that has been sold;

- (2) For the purposes of this Act, a person gives value for rights if he acquires the rights-
- (a) in return for a binding commitment to give credit, whether or not drawn upon; or
 - (b) as security for or satisfaction of a pre-existing claim, in whole or in part; or
 - (c) by accepting delivery pursuant to a pre-existing contract for purchase; or
 - (d) in return for anything given in exchange, or for any promise.
- (3) Unless there is anything repugnant in the subject or context, the singular form of any term includes the plural and the plural includes the singular.

3. Act to override other laws.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

4. Charge. - Any person may give a charge and any person may take a charge in movable property, except that no charge may be created in consumer goods other than a purchase money charge.

- 5. Secured obligations.-** (1) A charge may secure one or more obligations.
- (2) A charge may secure existing or future obligations.
 - (3) Secured obligations may be conditional.
 - (4) Secured obligations may be owed by any person or persons who need not be residents of Bangladesh and who need not be the creators of the charge.

- 6. Description of charged property.-** Where this Act requires a description of charged property, or a description of immovable property where fixtures are located, the description may be general, except with respect to the provisions of this Act relating to serial numbered vehicles.

Explanation- For the purpose of this section, a description such as “all assets” or “all movable property” of the debtor shall be sufficient.

- 7. Formalities of charge agreement.-** A charge agreement may be executed anywhere without notarial approval or authentication by any person or authority, and shall not be subject to stamp duty or any other tax.

- 8. Attachment and enforceability of charge.-** (1) A charge attaches to charged property and shall be enforceable against debtor and other persons with respect to the charged property only if-

- (a) the debtor has signed a charge agreement that provides a description of the charged property;
- (b) the secured party has given value to the debtor with respect to the charged property; and
- (c) the debtor has rights in the charged property, or the power to transfer rights in the charged property.

- (2) Upon attachment of a charge, the secured party shall automatically have a charge on proceeds of the charged property as provided in this Act, unless the charge agreement provides otherwise.

- 9. Use or disposal of charged property permitted.-** A charge shall not be invalid or fraudulent against creditors because the debtor has the right to use, deal in, or dispose of charged property or proceeds, or because the secured party fails to require the debtor to replace charged property, or account for proceeds.

- 10. Rights and duties of secured party in possession.-** (1) A secured party shall use reasonable care in the custody and preservation of charged property in the secured party's possession.
- (2) Unless otherwise agreed, if charged property is in the secured party's possession:
- (a) reasonable expenses are chargeable to the debtor and are also secured by the charge, including the cost of any insurance and payment of taxes or other charges incurred in the custody or preservation of the charged property; and the risk of accidental loss or damage is on the debtor to the extent of a deficiency in insurance coverage;
 - (b) the secured party may hold as additional security any increase or profits received from the charged property:

Provided that money received shall apply to reduce the secured obligation or shall be remitted to the debtor, as the secured prefers.

- 11. Debtor's request for information.** (1) A debtor may request an accounting of the unpaid obligations secured by charged property.
- (2) A secured party shall indicate its decision upon the request within two weeks after receipt.
- (3) A debtor shall be entitled to one response to a request under this section during any six-month period without fee.

Chapter II

Perfection and Priority of Charges

- 12. Perfection of a Charge.-** (1) A charge that has attached to charged property may be perfected against the rights of persons other than the secured party, as provided in this section.
- (2) A charge shall be perfected if it has attached to the charged property and if the requirements of this section have been satisfied.
- (3) if the requirements of this section are satisfied before the charge attaches to the charged property, the charge shall be perfected when it attaches.
- (3) A notice shall be enlisted in the enlistment office to perfect a charge in charged property:

Provided that a charge in goods, transferable instruments, title deeds, or documents shall be perfected without enlistment, if the secured party takes possession of the charged property:

Provided further that a charge in money shall only be perfected if the secured party takes possession of the money, except for cash proceeds:

Provided further that the enlistment of a notice shall not be required to perfect a charge in proceeds, except as required in section 24:

Provided further that a purchase money charge in consumer goods shall be perfected when it attaches, with neither enlistment nor possession by the secured party.

(5) If the charged property is a serial numbered vehicle, a charge shall be perfected only if a notice is enlisted containing a description of the property by serial number.

(6) Where goods are in the possession of a bailee that has issued a title deed covering the goods, a charge in the goods shall be perfected by perfecting a charge in the title deed, and any charge in the goods otherwise perfected while the goods are held by the bailee shall be subordinate to the charge perfected in the title deed.

13. Continuity of perfection.- (1) A charge shall remain continuously perfected unless there is an intervening period in which there is neither enlistment nor perfection.

(2) Where a secured party has a charge in goods in the possession of a bailee who has not issued a title deed with respect to the goods, or where a secured party has possession of goods, a transferable instrument, or a title deed-

(a) the secured party may make the goods or title deed available to the debtor for the purpose of sale or exchange, or for the purpose of loading, unloading, storing, shipping, manufacturing, processing, or otherwise dealing with the goods preliminary to their sale or exchange, and for a period of twenty days from the date the collateral is made available to the debtor, the secured party shall have the same rights under this Act as if the secured party maintained possession;

(b) the secured party may deliver the transferable instrument to the debtor for the purpose of sale or exchange, or for the purpose of collection, enforcement, renewal, or registration of transfer, and for a period of twenty days from the date of delivery to the debtor, the secured party shall have the same rights under this Act as if the secured party maintained possession.

(3) Where a secured party assigns a perfected charge, enlistment under this Act is not

required to continue the perfected status of the charge.

- 14. Priorities among charges in same charged property.-** (1) Charges have priority according to the time of enlistment or the time of perfection, whichever is first, unless otherwise provided in this Act:

Provided that there is no intervening period during which there is neither an effective enlistment nor perfection.

- (2) The first charge to attach has priority among charges in the same charged property that are not perfected.
- (3) For the purposes of this section, a date of enlistment or perfection as to charged property shall also be a date of enlistment or perfection as to proceeds.

- 15. Priority over judgment creditor, bankruptcy receiver, and tax claims.-** (1) A charge has priority over the rights of a judgment creditor or bankruptcy receiver unless the person becomes a judgment creditor or bankruptcy receiver before the charge is perfected and before a notice covering the charged property is enlisted.

- (2) A charge has priority over the claim of any tax authority unless a notice of the claim is enlisted in the enlistment office for charges before the charge is perfected and before a notice covering the charged property is enlisted.

- 16. Rights of buyers and lessees.-** (1) A buyer takes charged property free of any charge if the buyer gives value for the charged property without knowledge of the charge and before it is perfected and, in the case of tangible property, the buyer takes delivery of the charged property before the charge is perfected:

Provided that a bona fide purchaser for value in the ordinary course of business who buys from stock in trade takes the goods free of any charge, even if the charge is perfected and even if the buyer knows of its existence.

- (2) A lessee of goods takes its leasehold interest free of any charge in the goods if the lessee gives value for the goods and takes delivery without knowledge of the charge and before it is perfected:

Provided that a bona fide lessee for value in the ordinary course of business takes the leasehold free of a charge in the goods even if the charge is perfected and even if the lessee knows of its existence.

- (3) Where a person files a notice with respect to a purchase money charge in goods before or within twenty days after the debtor receives delivery of the goods, the charge has priority over the rights in the goods of a buyer, lessee, tax authority, judgment creditor or bankruptcy receiver which arise between the time the charge attaches and the time of enlistment.
- (4) Notwithstanding any other provision in this section, the buyer or lessee takes free of a charge in a serial numbered vehicle only if the buyer or lessee bought or leased without knowledge of the charge and the serial numbered vehicle was not correctly described by serial number in an enlisted notice.

17. Priority of purchase money charges against charges in future collateral.- (1) A perfected purchase money charge in equipment has priority over a prior conflicting charge that covers future equipment and also has priority in its proceeds, if the purchase money charge is perfected when the debtor receives possession of the equipment or within twenty days thereafter.

(2) A perfected purchase money charge in stock in trade or livestock has priority over a prior conflicting charge covering future stock in trade or livestock, and in its proceeds, if:-

- (a) the charge is perfected when the debtor receives possession of the stock in trade or livestock; and
- (b) the purchase money secured party communicates in writing to the holder of the conflicting charge, if the holder enlisted a notice covering the same types of charged property before the date of enlistment by the purchase money secured party:

Provided that the communication shall state that a purchase money charge has been taken or is expected to be taken in stock in trade or livestock of the debtor and shall describe the charged property by item or type.

18. Priority of certain liens arising by operation of law.- Where a person in the ordinary course of business furnishes services or materials with respect to charged goods, and where by operation of law a lien in the goods arises for the value of materials or services, the lien has priority over a perfected charge, while the person is in possession of the goods.

19. Priority of charges in fixtures.- (1) A charge under this Act may be created in fixtures:

Provided that no charge may be created in fixtures that are basic and ordinary building materials used to build upon or improve immovable property after they are incorporated into the immovable property.

- (2) A perfected charge in fixtures has priority over the interest of the owner, a tax authority, a judgment creditor, a bankruptcy receiver, or the conflicting interest of a mortgagee notwithstanding any prior agreement or covenant in the mortgage, if:-
 - (a) a notice of the charge is enlisted before the tax lien is enlisted in the enlistment office, or before an interest in the fixtures is acquired by a judgment creditor or bankruptcy receiver, or before the mortgage or interest of the owner is registered in the appropriate registry of mortgages on immovable property; or
 - (b) the charge is a purchase money charge, and a notice is enlisted before the goods become fixtures or within twenty days thereafter, and the conflicting interest arises before the goods become fixtures.
- (3) On default, subject to Chapter IV, a secured party who has priority under this section may remove fixtures from immovable property.
- (4) A secured party that removes fixtures shall promptly reimburse any mortgagee other than the debtor for the cost of repair of any damage to the immovable property.
- (4) The secured party need not reimburse the mortgagee or owner for any diminution in value caused by the absence of the goods removed or by any necessity for replacing them.
- (6) A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

20. Priority in accessions.- (1) A charge may be created in an accession and continues in charged property that becomes an accession.

- (2) If a charge is perfected when the charged property becomes an accession, the charge remains perfected in the accession.
- (3) A charge in goods created before or at the time the goods become an accession has priority with respect to the accession over a claim to the accession made by a person who has a claim in the whole.
- (3) On default, subject to Chapter IV, a secured party may remove an accession from

other goods if the charge in the accession has priority over the claims of every person having an interest in the whole.

- (5) A secured party that removes an accession shall promptly reimburse the holder (other than the debtor) of any interest in the whole or the other goods whose interest is superior to that of the secured party for the cost of repair of any physical injury to the whole.
- (6) A secured party need not reimburse for any diminution in value of the whole caused by the absence of the accession removed or by any necessity for replacing it.
- (7) A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

21. Priority in commingled goods.- (1) No charge may be created in goods after the goods become commingled goods.

- (2) Where charged property becomes commingled goods, a charge in the original charged property shall be discharged and a charge attaches to the product or mass in proportion to the secured party's share of the mass.
- (3) If the charge is perfected before the charged property becomes commingled goods, no further enlistment is needed to continue the perfection of the charge.
- (4) If more than one charge attaches to a product or mass-
 - (a) the charge that is perfected has priority over the charge that is not perfected at the time the charged property becomes commingled goods; and
 - (b) if more than one charge is perfected, the charges shall rank equally in proportion to the quantity of the charged property at the time it became commingled goods.

22. Purchase of documents and transferable instruments.- A purchaser of documents or transferable instruments has priority over any charge in the documents or transferable instruments and also has priority with respect to the proceeds of the documents or transferable instruments if:-

- (a) the purchaser in the ordinary course of business gives value and takes possession of the documents or transferable instruments; and

- (b) the documents or transferable instrument does not indicate that there has been an assignment or prior charge.

23. Priority subject to subordination.- A person entitled to priority under this Act may agree to modify or forego the priority, and no enlistment shall be necessary with respect to any such agreement.

24. Disposal of charged property and rights in proceeds.- (1) Except as otherwise provided in this Act, a charge continues in charged property notwithstanding sale, lease, license, exchange, or other disposal thereof, unless the secured party authorised the disposal free of the charge, and the charge also attaches to proceeds of the charged property.

(2) If a charge was perfected, a charge in proceeds of the charged property shall remain continuously perfected, but shall cease to be perfected twenty days after the debtor receives the proceeds unless-

- (a) the charge was perfected by enlistment and the proceeds are cash proceeds;
- (b) the charge was perfected by enlistment and an amendment is enlisted covering the proceeds within the twenty day period; or
- (c) the charge was perfected by enlistment and the proceeds are movable property of a kind already covered by the notice:

Provided that if a time arises when the charge in proceeds is not perfected, it may be enforced only against the debtor.

25. Future advances.- Where a perfected charge secures an obligation by the secured party to make future advances, the rights of a tax authority, judgment creditor or bankruptcy receiver have priority over the charge only to the extent the charge secures advances made more than twenty days after-

- (a) a notice of a tax lien is enlisted in the enlistment office; or
- (b) the secured party has actual knowledge of the judgment or bankruptcy proceeding.

26. Assignments.- (1) A person may assign all or part of his rights in accounts, documents, transferable instruments, and other rights to payment.

(2) An assignment may be a general assignment, including existing rights to payment and those that arise in the future.

- (3) Failure to inform the account debtor of an assignment has only the effects specified in this section.
- (4) No information to the account debtor shall be required for attachment, perfection or enforcement of a charge arising from an assignment.
- (4) If information of an assignment is given to the account debtor, the information shall be in writing, shall sufficiently identify the rights assigned, and shall be signed by the assignor or the assignee, but need not disclose any of the terms or conditions of the assignment.
- (6) The rights of an assignee are subject to all the terms of the agreement between the account debtor and assignor and any defense or claim arising from the transaction that gave rise to the agreement between the account debtor and the assignor.
- (7) An account debtor shall perform his obligation by paying the assignor until, but not after, the account debtor receives a notice, that the amount due or to become due has been assigned and that payment is to be made to the assignee.
- (8) After being informed of an assignment, the account debtor shall perform his obligation by paying the assignee, and not the assignor:

Provided that if requested by the account debtor, the assignee shall furnish timely and sufficient proof that the assignment has been made, and unless the assignee complies, the account debtor may perform his obligation by paying the assignor even if the account debtor has received a notice of assignment.

- (9) A term in a charge agreement shall not be enforceable if it prohibits or restricts assignment or the creation, attachment, perfection, or enforcement of a charge.
- (10) A term in a charge agreement shall not be enforceable if assignment or the creation, attachment, perfection, or enforcement of a charge would cause a default or breach.

Chapter III

Enlistment

- 27. The enlistment office.-** (1) The Government shall, by notification in the official Gazettee, establish a central enlistment office with local offices at such places as it deems fit for the purposes of this Act:

Provided that the Government may designate by such notification any office or offices of the Government at any place or places as the enlistment office for such purposes.

Provided further that the Government may issue a license to any entity recognized by the law of Bangladesh for the purpose of discharging any or all of the duties of the enlistment office in accordance with this Act and rules prescribed by the ministry in charge.

- (2) A notice to perfect a charge, and any amendments, continuation statements, and termination statements with respect to the notice, shall be enlisted in the enlistment office.
- (3) All enlistments shall be made in such form and manner as may be prescribed.
- (4) Notices enlisted pursuant to this Act, and indexes and other records created by the enlistment office with respect to the notices, in any form or medium, shall be public records, and any person has a right to inspect and obtain copies of these records on payment of such fee as may be prescribed.

28. General provisions on initial notice.- (1) An initial notice shall be sufficient if it provides-

- (a) the name and mailing address of the debtor;
 - (b) the name and mailing address of the secured party or a representative of the secured party; and
 - (c) a description of the charged property covered by the notice.
- (2) In addition to the facts mentioned in sub-section (1), a notice shall provide a description of the relevant immovable property, if it covers timber to be cut or minerals to be extracted, or if the charged property is goods that are or are intended to become fixtures.
 - (3) A person shall be entitled to file an initial notice only if the debtor authorizes the enlistment in a signed record.
 - (4) By signing a charge agreement, a debtor authorizes the enlistment of an initial notice or amendment covering the charged property described in the charge agreement, and proceeds of the charged property, whether or not the charge agreement expressly covers proceeds.

- (5) A notice may be enlisted before a charge agreement is made, or before a charge attaches to charged property.
- (6) A lessor or buyer of accounts or documents may file a notice using the terms lessor, buyer, or words of similar meaning, instead of the terms secured party and debtor.
- (7) A notice substantially complying with the requirements of this Chapter shall be effective, unless the insufficiency with respect to the name of the debtor makes the notice seriously misleading.

29. Name of debtor and secured party.- (1) A notice sufficiently provides the name of the debtor-

- (a) where the debtor is registered in the Joint Stock Company Registry, if the notice provides the name of the debtor as shown on that registry;
 - (b) where the debtor is an individual, the name of the debtor and the given names of the parents of the debtor;
 - (b) where the debtor is a foreign entity qualified to do business under the Companies Act, 1994 (XVII of 1994), if the notice provides the name of the debtor as shown on the records of the Joint Stock Company Registry.
- (2) A notice that sufficiently provides the name of the debtor shall not be ineffective due to the presence or absence of a trade name or alias of the debtor.
 - (3) A notice that provides only the debtor's trade name or alias does not sufficiently provide the name of a debtor.
 - (4) A notice may name more than one debtor and more than one secured party.
 - (5) The failure to indicate the representative capacity of a person identified as a secured party does not affect the sufficiency of a notice.

30. Effect of certain changes on effectiveness of notice.- (1) An enlisted notice remains effective with respect to charged property that is sold, assigned, exchanged, leased, licensed, or otherwise disposed of and in which a charge continues, even if the secured party knows of, or consents to, the disposal.

- (2) Where a debtor so changes his name that an enlisted notice becomes seriously misleading, the notice shall be effective to perfect a charge in charged property acquired by the debtor before, or within three months after, the change.
- (3) The notice shall not be effective to perfect a charge in charged property acquired by the debtor more than three months after the change, unless an amendment to the notice that renders the notice not seriously misleading shall be enlisted within three months after the change.
- (4) A notice is ineffective against a buyer or lessor if, with respect to a serial numbered vehicle, a serial number on the notice is incorrect with respect to serial numbered vehicle.

31. Duration and effectiveness of notice and effect of lapsed notice.- (1) An enlisted notice shall be effective for a period of five years after the date of enlistment, unless the notice states a longer period of effectiveness.

- (2) The effectiveness of an enlisted notice lapses on the expiration of that period unless before the lapse a continuation statement is enlisted.
- (3) Upon lapse, a notice becomes ineffective and any charge that was perfected by the notice is not perfected, unless the charge is perfected without enlistment in accordance with this Act.
- (4) If the charge becomes not perfected upon lapse, it is deemed never to have been perfected against a prior or subsequent purchaser of the charged property for value.

32. Amendment of notice and its effectiveness.- (1) An initial notice may be amended by one or more amendments.

- (2) An amendment shall-
 - (a) identify the initial notice by its enlistment number;
 - (b) identify the secured party on the notice who authorizes the amendment;
 - (c) indicate that it is an amendment to the notice; and
 - (d) provide all of the information required of an initial notice, reflecting the changes to the notice.

- (3) Where an amendment adds charged property covered by a notice, or adds a debtor to a notice, it shall be effective if the debtor authorizes the enlistment in a signed record.
- (4) In addition to the requirements of sub-section (2), if there is more than one secured party on the notice, the amendment shall be effective if a secured party authorizes the enlistment in writing.
- (5) By signing a charge agreement, a debtor authorizes the enlistment of an amendment, covering the charged property described in the charge agreement, and proceeds of the charged property, whether or not the charge agreement expressly covers proceeds.
- (6) An amendment that adds charged property shall be effective as to the added charged property only from the date of the enlistment of the amendment.
- (7) An amendment that adds a debtor shall be effective as to the added debtor only from the date of the enlistment of the amendment.
- (8) An amendment other than an amendment to add charged property or add a debtor shall be effective only if a secured party on the notice authorizes the enlistment in a signed record.
- (9) An amendment shall be ineffective if it purports to delete all secured parties and fails to provide the name of a new secured party, or purports to delete the names of all debtors and fails to provide the name of a debtor not previously covered by the notice.
- (10) Where there is more than one secured party on the notice, any secured party may authorize the enlistment of an amendment, but an amendment authorised by one secured party shall not affect the rights of another secured party.
- (11) The enlistment of an amendment does not extend the period of effectiveness of a notice.

33. Continuation statement and effect.- (1) The period of effectiveness of a notice may be continued by enlisting a continuation statement that-

- (a) identifies the initial notice by its enlistment number;
- (b) identifies a secured party on the notice who authorizes the continuation; and
- (c) indicates that the effectiveness of the notice, with respect to the secured party

who authorised the enlistment, is to be continued.

- (2) A continuation statement may be enlisted only within one year before the expiration of the notice.
- (3) Upon timely enlistment of a continuation statement, the effectiveness of the notice continues for a period of five years commencing on the day on which the notice would have become ineffective in the absence of the enlistment:

Provided that the effectiveness shall be continued only with respect to the secured party who authorised the enlistment of the continuation statement.

- (4) Upon the expiration of the five-year period, the notice lapses with respect to the secured party unless, before the lapse, another continuation statement authorised by that secured party is enlisted.

34. Termination statement and effect.- (1) The effectiveness of a notice may be terminated by filing a termination statement that-

- (a) identifies the initial notice by its enlistment number;
 - (b) identifies a secured party on the notice who authorizes the termination statement; and
 - (c) indicates that the notice shall be no longer effective with respect to the interest of the secured party who authorised the enlistment.
- (2) Within twenty days after the secured party receives a written demand by the debtor, the secured party for a notice shall file a termination statement if:-
 - (a) there is no outstanding secured obligation and no commitment to give further value, or the debtor did not authorize the enlistment of the initial notice; or
 - (b) the notice covers accounts or documents that have been assigned but as to which the account debtor or other person obligated has discharged its obligation.
 - (3) Upon the filing of an effective termination statement, the notice to which the termination statement relates becomes ineffective with respect to the authorizing secured party.

35. Enlistment and its effectiveness.- (1) Delivery of a notice and tender of the enlistment fee constitutes enlistment, except as provided in sub-section (2).

(2) The enlistment office may refuse to file a notice for one or more of the following reasons, but for no other reason-

(a) in the case of an initial notice, the notice does not provide the information required by section 28;

(b) in the case of an amendment, the notice does not provide the information required by section 32, or the notice identifies an initial notice whose effectiveness has lapsed;

(b) in the case of a continuation statement, the notice does not provide the number of the initial notice, or was not enlisted within the permitted one-year time period; or

(d) in the case of a termination statement, the notice does not provide the number of the initial notice;

(e) the person who delivers the notice tenders less than the full enlistment fee, or fails to make arrangements for payment suitable to the enlistment office.

(2) A notice presented to the enlistment office with the required enlistment fee, but which the enlistment office refuses to accept for a reason other than one set forth in this section, is effective as an enlisted notice except against a purchaser of the charged property that gives value in reasonable reliance upon the absence of the notice from the files.

(3) If an enlistment office refuses to accept a notice for enlistment, it shall communicate the fact of and reason for its refusal to the person that presented the record within two business days of the refusal.

36. Maintenance of notices.- (1) For each notice enlisted, the enlistment office shall-

(a) assign a unique number to the enlisted notice;

(b) create a record that bears the number assigned to the enlisted notice and the date and time of enlistment; and

(c) maintain the enlisted notice for public inspection.

- (2) The enlistment office shall index an initial notice by the name of the debtor and shall index all subsequent notices relating to an initial notice.
- (3) The enlistment office shall maintain the capability 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.
- (4) The enlistment office shall maintain records of lapsed notices for a period of five years beyond the date of lapse.

37. Information from enlistment office.- (1) The enlistment office shall communicate the following information to any person that requests it, namely:-

- (a) whether there is on record on a date and time specified by the enlistment office, but not a date earlier than three business days before the enlistment office receives the request, any notice that designates a particular debtor and has not lapsed with respect to all secured parties;
 - (b) the file number, and the date and time of enlistment of each notice;
 - (c) the name and address of each secured party on each notice; and
 - (d) the file number, and the date and time of enlistment of each initial notice and identification of each amendment, continuation statement, or termination statement related to the initial notice.
- (2) Information furnished by the enlistment office shall be admitted into evidence in the courts without extrinsic evidence of authenticity.
 - (3) The enlistment office shall communicate the information under this section within two business days after receipt of a request.

38. Fees.- (1) The fee for enlistment of an initial notice, amendment, or continuation statement shall be such fixed fee as may be prescribed:

Provided that there shall be no fee for filing of a termination statement.

- (2) The fee for preparing a search report and copies of records shall be such as may be prescribed.

Chapter IV

Enforcement

39. General provisions on default.- (1) The parties to a charge agreement are free to define default in respect of the agreement.

(2) Upon default, the secured party shall have-

- (a) the right to possession or control of the charged property, as the secured party prefers, even if the charge agreement is silent about possession or control; and
- (b) other rights and remedies provided in this Chapter and also in the charge agreement.

(3) If the charged property is a title deed, the secured party may proceed as to the title deed or as to the goods covered by the title deed.

(4) Upon default, the secured party shall be entitled to an order from the court granting the secured party possession or control over the charged property:

Provided that no such order shall be made by a court unless there is sufficient evidence to show that there is an enforceable charge agreement, and the debtor is a defaulter.

(5) No court, other than a money loan court established under the Money Loan Court Act, 1990 (IV of 1990) shall entertain a suit under this Act; and any money recoverable under a charge agreement shall be deemed to be "loan" within the meaning of that Act.

(6) When a secured party has obtained a decree, the priority of its execution shall relate back to the date of enlistment or perfection of the charge, and a sale in execution of such decree shall foreclose the charge.

(7) The secured party may buy the charged property at an execution sale.

(8) The rights and remedies provided in this Chapter shall be in addition to any right and remedy provided in any other law for the time being enforce.

40. Collection rights of secured party.- (1) Upon default with respect to charged accounts or other rights to payment, or whenever agreed by the debtor, the secured party is entitled to notify an account debtor or the obligor on any other right to payment to make payment to the secured party, and also to take control of any proceeds.

(2) A secured party who by terms of an assignment is entitled to full or limited recourse against the debtor and who undertakes to collect from account debtors or obligors shall proceed in a commercially reasonable manner and may deduct the reasonable expenses of realization from the collections.

(3) If the charge agreement secures a debt, the secured party shall account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency.

(4) If the transaction was a full or general assignment of accounts without recourse, the debtor is entitled to any surplus or is liable for any deficiency only if the agreement so provides.

41. Secured party's right to take possession after default.- (1) Upon default, the secured party may take possession or control of charged property without any legal proceedings before any court, provided that the debtor agrees in writing after default.

(2) The secured party may institute legal proceedings before the court to obtain any remedy provided by law.

(3) If the charge agreement so provides, the secured party may require the debtor to assemble the charged property and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

(4) A secured party may render equipment unusable without removal, and may dispose of charged property on the debtor's premises.

42. Secured party's disposal of charged property after default.- (1) After default, a secured party may sell, lease, license or otherwise dispose of any or all of the charged property.

(2) Disposal of the charged property may be made publicly or privately, and may be made in one or more contracts.

(3) Disposal may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposal, including the method, manner, time, place and terms

shall be commercially reasonable.

- (3) A secured party who undertakes to collect from account debtors or obligors shall proceed in a commercially reasonable manner.
- (5) If the debtor has not renounced the right to be informed of disposal, the secured party shall give the debtor reasonable notice of the time and place of any public sale or the time after which any private sale or other intended disposal is to be made, unless charged property is perishable or threatens to decline speedily in value.
- (6) The secured party shall also inform any other secured party from whom the secured party has received (before sending notice to the debtor or before the debtor's renunciation of rights) a signed written claim of an interest in the charged property.
- (7) The secured party may buy at any public or private sale.

43. Consequences of disposal.- (1) The proceeds of disposal shall be applied in the following order to-

- (a) the reasonable expenses of retaking, holding, preparing for disposal, and disposing of the charged property, including reasonable attorneys' fees and legal expenses incurred by the secured party;
- (b) the satisfaction of debt secured by the charge;
- (c) the satisfaction of debt secured by any subordinate charge in the charged property if a signed written demand is received before distribution of the proceeds is completed:

Provided that, if requested by the secured party, the holder of a subordinate charge shall promptly give reasonable proof of the interest, and the secured party need not comply with the demand unless the proof is given.

- (2) The secured party shall account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency.
- (3) When charged property is disposed of by a secured party after default, the disposal transfers to a purchaser for value all rights in the charged property, and discharges the charge and any subordinate charge or privilege, and the purchaser takes free of all such rights and interests, if the purchaser acts in good faith.

- 44. Compulsory disposal of charged property and acceptance of the charged property as discharge of obligation.** — (1) A secured party may, after default, propose to retain the charged property in full or partial satisfaction of the obligation.
- (2) The proposal shall be given to the debtor, if the debtor has not signed after default a record renouncing rights under this subsection.
- (3) The proposal shall also be given to any other secured party from whom the secured party has received (before sending the proposal to the debtor or before the debtor's renunciation of rights) a signed written claim of an interest in the charged property.
- (4) If the secured party receives objection in writing from a person entitled to receive notice within twenty days after the notice was sent, the secured party must dispose of the charged property as provided in section 42.
- (5) If no such written objection is received within the twenty-day period, the secured party may retain the charged property in satisfaction of the debtor's obligation in accordance with the proposal.
- 45. Debtor's right to redeem charged property.** - (1) Unless otherwise agreed in writing after default, the debtor or any other secured party may redeem the charged property by fulfilling all obligations secured by the charged property and expenses reasonably incurred by the secured party in retaking, holding and preparing the charged property for disposal, in arranging for the disposal, including reasonable attorneys' fees and legal expenses.
- (2) Redemption shall take place before the secured party has disposed of charged property or entered into a contract for its disposal or before the obligation has been discharged.
- 46. Secured party's liability for failure to comply with this Chapter.**- (1) If the secured party does not comply with the requirements of this chapter, disposal of charged property may be ordered or restrained by a court on appropriate terms and conditions.
- (2) If the disposal has occurred, the debtor or any person entitled to be informed or whose charge has been made known to the secured party prior to the disposal has a right to recover from the secured party any loss caused by a failure to comply with this chapter.

- (3) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner.
- (3) A sale is commercially reasonable if the secured party sells the charged property in conformity with reasonable commercial practices among dealers in the type of property sold, and the same principles shall apply when appropriate to the lease, license, or exchange of the charged property.
- (5) Disposal which has been approved in any legal proceeding shall conclusively be deemed to be commercially reasonable, but no such approval is required by this Act.

Chapter V

Miscellaneous and Transitional Provisions

47. Effect of Act on prior transactions.- (1) Subject to the provisions of this Act, this section shall apply to transactions that fall within the provisions of this Act but which took effect prior to the commencement of this Act, hereinafter referred to as “prior transactions”.

(2) This Act shall apply to a conflict between a creditor under a prior transaction and a secured party whose charge was created under this Act.

(3) A creditor in a prior transaction may enlist a notice of a prior transaction in the same manner as enlistment of a notice of a charge under this Act. If the enlistment is made within ninety days of the effective date of this Act, the creditor’s interest in the prior transaction shall have priority over a charge created after the effective date of this Act.

Provided that if the enlistment is made after ninety days from the effective date of this Act, the creditor’s priority as to the prior transaction shall be measured from the date of enlistment in the event of a conflict with a charge created after the effective date of this Act.

48. Power to make rules.- The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

49. Publication of authentic English text. — After the commencement of this Act, the Government shall, by notification in the official Gazette, publish a text of this Act in English, and such text shall be called the Authentic English Text of the Act:

Provided that in the event of conflict between this Act and its English text, the Act shall prevail.

- 50. Limitation of section 159 of Companies Act.** Upon the effective date of this Act, section 159 of the Companies Act shall have no application to any property that may be charged under this Act.

Statement of Objects and Reasons

Unlike many other countries, movable property is not the chief source of business credit in Bangladesh. For a developing country movable property financing is a must as it provides greater access to business credit and thereby promotes commerce and accelerates economic activity. But our law is weak and inadequate on movable property financing. Except pledge, hypothecation and financial lease, other modes of movable financing, such as equipment financing, stock in trade financing, receivables financing, assignment of accounts, etc. are not much in use, thereby limiting greater access to business credit. To meet these problems our law requires to be modernized and updated in the light of the experiences of the developed and other developing countries. Hence, this Bill.

The Bill aims at ensuring wider use of movable property to secure debt and obligation. It creates an in rem property right, namely charge that may attach to any movable property, both tangible and intangible, existing or that may arise in the future, for securing a debt or obligation. Such charge shall automatically attach to proceeds of charged property in case of disposal of the property.

The Bill defines the rights of competing creditors to the same charged property. It fixes the priority so that the creditors know beforehand the credit risk they may face.

The Bill provides for establishing an enlistment office where all charges attached to movable property may be recorded following a simple, inexpensive procedure, and from which information may be obtained by any person, on payment of a nominal fee, regarding debt or obligation of any person or claim of any person on any charged property.

The Bill has specified the enforcement rights of a creditor with respect to charged property. He is given the right to possession of the charged property upon default and to satisfy the secured debt by public or private sale of the charged property, without any legal proceedings. His right to seek remedy through court is also reserved.