

## Summary of Provisions related to the Registry for the Security Interest in Personal Property

The enactment of the Security Interests in Personal Property Act is designed to implement a legal framework, by international standards, to modernize and improve the availability of domestic credit to the private sector, while effectively minimizing the risks of non-payment of loans. Currently, despite our wide variety of financial institutions, access to credit in Jamaica is limited to only well-established businesses and persons, who own real property. Accordingly, there is insufficient funding for investment and entrepreneurship to other key sectors or persons, which consequentially stifles the growth potential of the country.

A modern secured transaction regime will promote and revitalize commerce. It will facilitate the pledge of personal/movable property, as secured property for a loan, by a borrower. It will also seek to remove any ambiguity relating to the property pledged, to whom such property was pledged, and allows the secured creditor the right to seize and repossess such property speedily upon default of payment. It will further seek to repeal and replace any other law that governs the creation of security interests in personal property in Jamaica, thereby ensuring certainty and consistency in this area of the law.

Thus to give effect to this regime, the Security Interests in Personal Property Act will be predicated on four (4) fundamental principles:

- a. Creation of security interests in any form of personal property (tangible or intangible, present or future);
- b. Clarification on priorities among the different claims, by creditors, on the secured property;
- c. **Public notification of security contracts; and**
- d. Enforcement, by creditors, of property rights in the secured property, in an efficient manner.

### **Part VII - Registration (sections 47 -58)**

This Part provides for the **establishment of a Security Interests Registry** and the duties of the Registrar. A major function of the Registrar is to maintain the Register, in an electronic form, in a state available for public inspection.

The clause also states that **security interests may be registered by a registration notice**, which sufficiently identifies the debtor and secured creditor and sufficiently describes the secured property. This notice is authorized by the debtor signing the security contract. However, the notice may be registered prior to the signing of the security contract and may apply to multiple contracts. The registration notice may be amended subsequently, by the written authorization of the secured creditor concerned, or by the debtor in the event he wishes to add a secured property or another debtor to the registration notice.

The validity of the registration of a notice of a security interest may be affected by any error, which is materially misleading, in respect of the name of the debtor or the serial number, if the security interest is in a motor vehicle.

A Court, upon application by the execution creditor, may order that a notice of the interest of an execution creditor be entered in the Register.

This Part provides that a registration notice is effective for the duration of the period that the secured obligations remain outstanding, unless terminated under this Act. **A registration notice is terminated upon the registration of a termination notice and is only effective against the secured creditor named in the notice as authorizing the termination notice, by signing same.**

The Part also gives the Registrar the discretion to refuse the registration of any notice, but mandates that where the Registrar cancels any registration in error, he must restore such registration.

This Part further declares that the information contained in notices is public record, but a person is not deemed to have knowledge of such notices.

### **The objectives of this registry**

1. To provide a practical, effective and sustainable system for publicizing rights so that other potential lenders can determine whether an asset has already been pledged to somebody else.
2. To allow the creditor to file notice that specifies the parties to the loan agreement and describe the collateral that has been pledged
3. To allow for the establishment of priority rights to collateral in the event of dispute among creditors and other third parties (rights stated in the security agreement itself)
4. To allow alert prospective creditors and buyers of possible prior security interest in the debtor's property
5. To note the date of filing of notice as this indicates the date by which competing claims are measured
6. To provide speedy internet access to information regarding the filing of security interests.

### **See details below:**

#### **Clause 47 (Registry):**

It speaks to the establishment of a Security Interests Registry, equipped with a Registrar of Security Interests, who shall be appointed by the Minister. The Registrar shall be responsible for ensuring the maintenance of the Register, and for the performance of the functions assigned to him, which he may be delegate to any member of staff of the Registry.

**Clause 48 (Register):**

It specifies that the Register shall be maintained in an electronic form that provides for the filing of all registration notices, amendment notices, continuation notices and termination notices, and the assignment of a unique identification number to each such notice, together with a notation of the date and time of filing. Any of the aforesaid notices is deemed registered at the time that the unique identification number, date and time is assigned to it and the Registrar shall thereupon cause to be prepared a printable written statement containing such information.

This clause also mandates that the Registrar shall maintain the Register in a manner to allow for public inspection, by imputing a search of data by the name of the debtor, or by the registration number of the registration notice, amendment notice, continuation notice or termination notice, or by serial number of a motor vehicle. It further mandates the Registrar to maintain records of lapsed or terminated registration notices for ten years beyond the date of such lapse or termination.

This clause further provides that if the registration notice is affected because the Registrar failed to ensure the aforesaid requirements are met, the notice remains effective, except against a purchaser, for value acting in reliance upon the available information from the Register, of the secured property concerned.

This clause dictates that registration of a notice in the Registry is not constructive notice. An interpretation is given for the term “registration number”.

**Clause 49 (Registration notices):**

It dictates that a registration notice filed under this Part shall sufficiently identify the debtor and the creditor and the debtor’s and the creditor’s business or residential address, respectively, as well as, describe the secured property covered under the notice. If the secured property under the registration notice relates to fixtures, a description of the real property where the fixtures are located must be provided in such notice.

It also allows for a registration notice to relate to multiple security contracts, multiple debtors and secured creditors. Such registration notice, upon the authorization of the debtor, may be registered before or after the security contract is concluded and before or after the security interest attaches. Authorization of the debtor need not be contained in the registration notice or be disclosed to the Registrar, and may be given after registration of the registration notice and where the debtor signs the security contract.

It further provides that the validity of the of the registration notice is not affected if a person being the agent of the secured creditor registers such notice but fails to declare his capacity in the notice as an agent.

It also states that a registration notice remains effective in a secured property that is sold, exchanged, leased, licensed or otherwise dealt with and in which the security interest continues despite the secured creditor's knowledge.

It finally dictates that the registration of an amendment notice, continuation notice or termination notice by a secured creditor does not affect the rights of any other secured creditor identified in the registration notice concerned.

**Clause 50 (Sufficiency of identification):**

This clause provides that a person or entity is sufficiently identified in a notice if –

- a) notice states the person name (Jamaican);
- b) notice states name of the person as stated in his passport (non-Jamaican);
- c) notice states name of an entity as provided for by the Constitution or under other enactment that established it;
- d) notice states registration number of a company incorporated under the Companies Act;
- e) notice states name of a company as depicted in the appropriate registry (company not domicile in Jamaica).

The clause also states that a person or entity sufficiently identified is not deemed ineffective because of the presence or absence of a trade name, and a notice that provides a trade name of such person or entity must sufficiently identify such person or entity.

**Clause 51 (Amendment notices):**

This clause provides that a registration notice may be amended, upon written authorization of one or more secured creditors, registering an amendment notice.

An amendment notice shall –

- a) identify the registration notice concerned;
- b) identify the secured creditor who authorized the amendment; and
- c) provide all the information required for the registration notice, by restating the registration notice to reflect the amendment.

This clause also provides that a debtor, via written authorization, may add a secured property or name of a debtor to the registration notice already registered and such addition is effective as to the secured property or debtor added, from the date of registration. Such written authorization by the debtor need not be contained in the amendment notice or be disclosed to the Registrar, and may be given after the registration of the amendment, and upon the signing of a security contract which adds a secured property to a security interest or identifies another debtor.

This clause further states an amendment notice shall be void and of no effect if it purports to delete all the secured creditors or debtors, without providing sufficient identification of one or more additional secured creditors or debtors.

The clause finally states that the registration of an amendment notice does not extend the duration of the registration notice.

**Clause 52 (Effect of defects, irregularities, etc.):**

It declares that a defect, irregularity, omission or error, unless materially misleading, does not affect the validity of the registration of a notice. Additionally, a registration of notice is invalid if there is a materially misleading defect, irregularity, omission or error in the name of the debtor in the notice or the serial number of the secured property, if a motor vehicle.

It also provides that a secured creditor, within twenty-one days after knowledge of any change in circumstances which would render a registration notice materially misleading, must file an amendment notice of such change otherwise the registration notice becomes invalid upon the expiration of such time.

It further states that unless as provided in the foregoing, a registration notice that is not materially misleading at the time of registration remains effective if after the notice is registered a change of circumstances renders the registration notice materially misleading.

It further declares that it is not necessary to show that someone was actually misled by the materially misleading defect, irregularity, omission or error to establish same.

**Clause 53 (Duration):**

It declares that the registration notice, unless terminated under any provision of this Act shall be effective for period that the secured obligation remains outstanding.

It also states that a secured creditor must file a termination notice within twenty-one days after the satisfaction of the secured obligation and if he fails so to do, he is liable to compensate any person who suffers loss as a result.

**Clause 54 (Termination notice):**

It dictates that the effectiveness of a registration notice may be terminated by the registration of a termination notice, which shall –

- a) identify the registration notice concerned, by its registration number;
- b) identify the secured creditor, under the registration notice, who authorized the registration of the termination notice; and
- c) state that the registration notice is no longer effective in relation to that secured creditor.

It also provides that the registration of a termination notice terminates the effectiveness of a registration notice only against the secured creditor who gave written authorization for the registration of the former notice.

**Clause 55 (Notice of interest of execution creditor):**

It states that upon an application by an execution creditor, the Court may direct that notice be entered in the Register, at the time of or any time thereafter entering judgment for the execution creditor or at the time of the filing of a bankruptcy petition or petition of insolvency. This notice shall identify the execution creditor concerned, the person owing the obligation to the execution creditor and describe the property against which the execution creditor claims or may claim a right.

**Clause 56 (Refusal of registration):**

This clause affords the Registrar the discretion to refuse registration of a notice if-

- a) registration does not identify the debtor(in case of registration notice);
- b) in the case of amendment notice, the notice does not identify the debtor, or does not provide the registration number on the registration notice, or purports to amend a notice that has lapse;
- c) in the case of a termination notice, the notice does not provide the registration number concerned or purports to terminate a registration notice that has lapsed, in respect of the secured creditors identified in the notice; or
- d) the applicable fees are not paid in full.

This clause also states that where the notice is refused on grounds other than the aforesaid, such notice is effective except as against a purchaser for value, who acts on the reliance of the absence of the notice in the Register.

This clause further declares that if the Registrar refuses to register any notice, he shall forthwith communicate this and the reason for same to the person submitting the notice.

**Clause 57 (Cancellation of clerical errors, etc.):**

This clause affords the Registrar the discretion to restore a registration incorrectly cancelled or removed because of a clerical error by the Registrar, and such restoration of the registration shall be regarded as having continued in force, as if it had not been so cancelled or removed. The Registrar may also, with the consent of the secured creditor, correct any clerical error or omission made, by the Registrar, in a registration.

**Clause 58 (Provision of information by Registrar):**

It mandates the Registrar to provide, upon payment of the relevant fees, the following information, upon request by any person –

- a) as to whether there is a registration notice that identifies a particular debtor or describes a motor vehicle by its serial number, and that has not lapsed in relation to all secured creditor identified in the notice;
- b) the registration number and the date and time of registration of the registration notice;
- c) the name and address of each debtor and secured creditor identified in the notice; and
- d) all the information contained in the notice.

The Registrar however has the discretion to determine the form in which such information is to be provided, and upon request, shall issue a certified search report or such other report appropriately certified by him. Such report issued by the Registrar shall be admissible in evidence in court, without proof of its authenticity.

This clause also gives the Registrar the discretion to provide information about registration notices to interested persons from time to time and upon terms agreeable to the Registrar, to include payment of reasonable fees for the provision of information.

The clause finally notes that nothing in this section precludes any right of inspection free of costs under section 48 (3), which speaks to the availability of the Register for public inspection.