

File: 09 MOC Secured Transactions

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Law of Secured Transactions

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Law of Secured Transactions.

101. Generally. The purpose of this Law is to encourage businesses to sell certain goods on credit (before they receive payment in full) by providing a method of creating and recognizing the businesses' rights to receive payment for the goods and to repossess and sell the goods if prompt and full payment is not received, in order to stimulate the growth and prosperity of the economy of Cambodia.

102. Definitions. As used in this Law:

(a) The term "Goods" means any articles of movable tangible personal property. The term "Goods" does not include:

(i) real estate, or

(ii) fixtures (tangible personal property which has been permanently affixed to real estate), or

(iii) intangible personal property (such as stocks and bonds), or

(iv) services of any kind.

(b) The seller of Goods or any other creditor is referred to in this Law as the "Creditor".

(c) The buyer of any Goods or the owner of any Goods is referred to in this Law as the "Owner".

(d) A "Security Interest" is the right, under certain circumstances, of a Creditor to take possession of and sell Goods owned by an Owner. A "Security Interest" created under this Law may cover only Goods. However, nothing in this Law shall be construed as preventing any person from entering into contracts providing for other types of security for property of any kind, whether Goods or not.

(e) A “Financing Statement” is the written document in the form prescribed by the Ministry of Commerce by subdecree which creates a Security Interest, as further described in Article 105.

(f) A “Release” is the written document in the form prescribed by the Ministry of Commerce by subdecree which is used to cancel a Financing Statement as further described in Article 119.

(g) A “Debtor” is any person who owes money to a Creditor and whose debt is secured by a Security Interest in Goods.

103. Basic rule. Any Creditor may request any Owner to grant him a Security Interest in any Goods which are sold to or owned by the Owner in order to assure payment of the purchase price of the Goods or to guarantee the payment of any other amount due, either presently or in the future, whether from the Owner or from any other party to the Creditor.

104. Scope of Security Interest. A Security Interest may cover:

(a) any Goods which are currently owned by the Owner, and

(b) any Goods which will be acquired by the Owner in the future.

105. Requirements for Financing Statements.

(a) The official forms for Financing Statements shall be established by the Ministry of Commerce by subdecree.

(b) In order to be valid and to create a valid Security Interest, a Financing Statement must meet all the following requirements:

(i) Be in writing on the official form to be established by the Ministry of Commerce.

(ii) Be signed by the Owner, or marked with his thumbprint or in any other traditional fashion sufficient to reliably indicate his consent.

(iii) Identify the Debtor, if the Debtor is a different person from the Owner.

(iv) Identify the total amount due to the Creditor, including any interest, penalties or other charges, and state the date each payment is due.

(v) Describe the Goods which are subject to the Security Interest.

(vi) State the names and principal addresses of the Owner and Creditor.

(vii) State the name and principal address of the Debtor, if the Debtor is different from the Owner.

(viii) State the address or addresses where the Goods subject to the Security Interest will be kept.

(ix) Show the date on which it was signed by the Owner.

106. Where Financing Statement must be filed. The Ministry of Commerce shall establish a Registration Office in Phnom Penh where all Financing Statements shall be filed.

107. When Financing Statements must be filed. In order to be valid, Financing Statements must be filed with the Registration Office within thirty (30) days after they are signed by the Owner.

108. Duties of Registration Office. The Registration Office shall receive, file, and index all Financing Statements and all Releases (as that term is defined in Article 119) filed with it and shall issue official receipts

for documents filed with it. The Ministry of Commerce shall establish, by subdecree, reasonable fees for filing Financing Statements and Releases and for issuing receipts.

(a) The Registration Office shall maintain an alphabetical index of Owners, Creditors and Debtors for all Financing Statements and all Releases filed with it.

(b) The alphabetical indices of Owners, Creditors and Debtors, and the Financing Statements and Releases themselves, are public documents. Anyone may inspect the indexes and the Financing Statements and Releases and make copies of them during normal business hours. The Ministry of Commerce may by subdecree impose reasonable charges for making copies of index entries or Financing Statements or Releases.

109. Effect of Financing Statements.

(a) A Financing Statement is binding on the Owner once it is signed by him and delivered to the Creditor.

(b) A Financing Statement is binding on all third parties as soon as:

(i) The Financing Statement has been filed at the Registration Office; or

(ii) The third party has actual knowledge of the existence of the Financing Statement.

110. Expense of filing Financing Statement. The expense of filing a Financing Statement shall be borne by the Creditor.

111. Duties of Owner.

(a) The Owner of Goods which are subject to a Security Interest has a duty to the Creditor not to sell or transfer possession of those Goods to anyone unless:

(i) (A) The Owner notifies the Creditor in writing of the date, time and place of the proposed sale or transfer of the Goods at least thirty (30) days in advance, and (B) The Owner directs the buyer or transferee of the Goods to pay directly to the Creditor the entire unpaid balance of the debt which is secured by the Security Interest at or before the time the Goods are transferred to the buyer or transferee; or

(ii) Prior to the sale or transfer, the Owner pays directly to the Creditor the entire unpaid balance of the debt which is secured by the Security Interest.

(b) The Owner of Goods has a duty to inform every new Creditor of the existence of any prior Financing Statements covering the Goods.

112. Recovery of Goods. If there is a valid Financing Statement in effect and the Owner or Debtor has defaulted on any payment due to the Creditor, the Creditor may recover the Goods covered by the Financing Statement from the Owner (or, subject to the provisions of Article 113 below, from a third party). The Creditor may sell the Goods in accordance with the provisions of this Law.

113. Rights of third parties.

(a) Generally, if a Financing Statement has been filed with the Registration Office, a third party who purchases from anyone any Goods which are the subject of the Financing Statement acquires those Goods subject to the Security Interest. The Security Interest will be binding on him as if he were the original Owner of the Goods and the Creditor may repossess and sell the Goods as if the third party were the Owner.

(b) However, a third party may acquire Goods which are the subject of a Financing Statement free and clear of any Security Interest if:

(i) The third party did not actually know at the time the Goods were transferred to him that a Financing Statement had been filed or that there existed a Security Interest in the Goods; and

(ii) The price paid for the Goods by the third party was less than an amount to be established by the Ministry of Commerce by subdecree from time to time, but not less than riels 4,000,000.

114. Enforcement of Creditor's rights. If the Owner or Debtor has defaulted on any payment due to the Creditor, the Creditor may take any reasonable and peaceful steps against the Owner or, subject to the exemption of subarticle 113(b), against any third party to recover Goods which are covered by a valid Financing Statement.

(a) If the Creditor exercises his remedies without first obtaining the assistance of the appropriate court, he may not use force or the threat of force or harm to any person or property to recover the Goods.

(b) If the Creditor seeks the assistance of the court in recovering the Goods, he may take such steps as the court authorizes him to take.

115. Priority of Financing Statements.

(a) If the Owner or Debtor has defaulted on any payment due to a Creditor who has a Security Interest in any Goods and who has properly filed a Financing Statement, the Creditor is entitled to the proceeds of sale of the Goods to the full extent of the amount due him from the Owner or Debtor and the Creditor's reasonable expenses of collection. The rights of such a Creditor take absolute preference over the rights of the Owner and also over the rights of any other Creditor who has no Security Interest in the Goods.

(b) When two or more Financing Statements cover the same Goods they shall have the following priority:

(i) A Financing Statement which has been filed shall take priority over any Financing Statement which has not been filed.

(ii) As between Financing Statements which have been filed, the first to be filed shall take priority.

(iii) As between Financing Statements which have not been filed, the Financing Statement with the earliest date shall take priority.

(c) All amounts due under a Financing Statement which has priority under subarticle 115(b) must be paid in full before any payment is made to the Creditor under the Financing Statement which is next in priority.

116. Duties of Creditor.

(a) Every Creditor has a duty to act in good faith to obtain the maximum reasonably available price for Goods subject to a Security Interest which are sold by the Creditor.

(b) Generally, Goods should be sold at public auction, or in a public marketplace, or in some other manner which is designed to obtain the maximum reasonably available price for the Goods, after giving consideration to the characteristics of the goods and the circumstances, such as whether they are perishable or seasonal Goods.

(c) The Creditor must give notice of the date, time, place and any special conditions of sale of the Goods to the Owner and the Debtor as far in advance as reasonably possible in order to enable them to attend the sale and to encourage other parties to attend the sale and make offers to purchase of the Goods.

117. Disposition of excess proceeds of Goods.

(a) After a Creditor has sold any Goods under article 116, he is entitled to recover from the proceeds of sale all amounts due him from the

Owner or Debtor, and the reasonable expenses of taking possession of the Goods and selling them.

(b) The excess proceeds of sale of the Goods, if any, shall be paid to all other Creditors who have valid Security Interests in the Goods, in the order of priority set forth in subarticle 115(b), until all of them are paid in full.

(c) If there are any remaining proceeds, they shall be paid to the Owner.

118. Duty of Creditor to deliver Release.

(a) If the amount due under a Financing Statement is paid in full, the Creditor must promptly sign and deliver to the Owner one or more written "Releases" as that term is defined in Article 119 below. The Creditor shall sign and deliver at least one Release for each separate Registration Office where the original Financing Statements were filed.

(b) An Owner or Debtor or any other party may, as a condition for making the final payment due under any Financing Statement, demand that the Creditor sign written Releases of all Financing Statement which are then in effect for the Goods and deliver them to the Owner at the same time the payment is made.

119. Requirements for Releases. All Releases shall:

(a) Be in writing on an official form to be established by the Ministry of Commerce.

(b) Be signed by the Creditor, or marked with his thumbprint or in any other traditional fashion sufficient to reliably indicate his consent.

(c) State the names and principal addresses of Owner and Creditor, and the name and address of the Debtor, if different from the Owner.

(d) State the date the Financing Statement to which the Release applies was signed by the Owner, and the date on which that Financing Statement was filed at the Registration Office.

(e) State any official identifying numbers or designations assigned to the original Financing Statement by the Registration Office.

(f) Show the date on which the Release was signed by the Creditor.

120. Filing of Releases.

(a) The Owner may file the Releases in the Registration Office.

(b) Upon the filing of a properly executed Release, the Registration Office shall mark the original Financing Statement and all relevant data concerning the Financing Statement in its indices as “Released”. At that point, the Security Interest which was created by the original Financing Statement shall be canceled and shall have no further force or effect.

(c) Unless the parties agree otherwise, the expense of filing a Release shall be borne by the Owner.

121. Penalty for breach. (a) A Creditor, a Debtor or an Owner who breaches his duties to any other party under this Law shall be liable to that party for the greater of:

(i) The damages arising directly from the breach, but not any remote or speculative damages; or

(ii) The value of the Goods covered by the Security Interest.

(b) The injured is also entitled to recover his costs of litigation, including reasonable attorneys’ fees.

(c) The injured party may also request the court to order the Registration Office to cancel any improper Financing Statement or Release. If such relief is granted by the court, the Registration Office shall comply with the court order and shall place a copy of the court order in its official records.

122. Criminal penalties. Any person who falsifies any Financing Statement or Release, or who knowingly participates in filing any false document with the Registration Office, shall be punished by imprisonment of up to one (1) year and a fine of up to riels 40,000,000 for each offense.

123. Other rights not affected. Failure of a person to comply with any provision of this Law shall not affect and rights or remedies which he may have under any other law.

124. Effective date; repeal of inconsistent laws. This Law shall take effect thirty (30) days after it is passed by the National Assembly. All laws and decrees of the Kingdom which were enacted prior to the effective date of this Law and which are inconsistent with any provision of this Law, including Articles 64 through 71 of Decree 38D of 1988, are hereby repealed and declared to be of no further force or effect when this Law becomes effective.