

# **Law for Secured Transaction on Movable Property in Banking Transactions**

## **Chapter One**

### **General Principal**

#### **Necessity of Creation of Law**

##### **Article One:**

This Law is created to regulate business and banking transactions that use Movable Property as security and specify the rights and obligations of the parties.

#### **Purpose**

##### **Article Two:**

The purpose of this law is:

- 1- To secure Debt and create contracts using Movable Property.
- 2- To pave the way for accessibility to negotiable banking credits by Securing Movable Property.
- 3- To provide mutual trust between parties involved in a banking transaction.
- 4- To have expansion of commerce, encouragement of investment, and upgrading national economy.

#### **Definitions**

##### **Article Three:**

The following **terms in this law denote the following meanings:**

**1-“Debt”** means the amount of money that debtor (Chargor) owed on an Account or due to financing in accordance with a Securing agreement. Debt may include the cost of Financing, penalties, compensation for damage and other related liabilities.

**2-“Debtor”** means a Person owing a Debt.

**3-“Lender”**A Person who in accordance with the provisions of De Afghanistan Bank Law and Banking Law is engaged in banking affairs inside or outside the country and has due financial rights or enforceable obligations over another Person .

**4-“Execution creditor”** means a Person who acquired court decree regarding secured charge in favour of himself.

**5 “Securing agreement”** means the written agreement between Chargor and Chargeholder for one or more transactions.

**6- “Chargor”** means a Person who owns Collateral and, in most cases, owes the Debt subject to securing charge. When owner of the Collateral and Debtor are different Persons, the term Chargor means the owner of Collateral and Debtor means the one owing the Debt.

**7- “Chargeholder”** means a Person in whose favour a Securing charge is created to secure the Debt

**8- “Securing charge”** means a real right in Movable Property, whether present or future. It secures one or more Debts that arise before or after the Securing agreement is signed.

**9-“Collateral”** means Movable Property charged to secure Debt. Collateral may be located within or outside Afghanistan and may include Proceeds collateral.

**10-“Proceeds collateral”** means money or a specific type of Movable Property that results directly or indirectly from the disposal of Collateral. The definition extends to later generation, Proceeds from Collateral and to insurance payments for damaged or lost Collateral.

**11-“Property”** means possessions or things capable of ownership and includes Movable and Immovable Property.

**12- “Movable Property”** means Property that could be moved without decomposition and any change in substance and form and include the tangible (goods) and the intangible such as documents of title, securities, accounts, copyrights, trademarks and patents.

**13- “Immovable Property”** means Property that could not be moved without decomposition and change in shape and substance and include house, building, land and fixed assets.

**14-“Goods”** means tangible Movable Property. They include Movable things that are attached to other Immovable or Movable Property.

**15-“Consumer Goods”** means Goods used or acquired primarily for personal, family or household purposes.

**16-“Inventory”** means Goods held by a Person for sale or lease. It includes Goods that are to be furnished pursuant to a contract of service.

**17- “Equipment”** means Goods that are used for the purpose of providing facilities to operating businesses.

**18-“Commingled Goods”** means Goods that are physically united with other Goods in such a manner that their identity is lost in a product.

**19- “Account”** means a monetary Debt that is not created based on a negotiable instrument, but the Debtor is obliged to pay it.

**20- “Account Debtor”** means a Person who owes, or will owe, a monetary Debt to another Person.

**21-“Transferee”** means a Person to whom a Transferor assigns a Securing agreement or an Account.

**22-“Transferor”** means a Person who assigns money that others owed him under a Securing agreement or an Account to a Transferee.

**23-“Notice”** Written information, relating to a subject, that is sent to the address of central office, or place of residence or activity of the Person in question and its receipt has been ensured..

**24. “Registry”** means an office that registers a secured transaction on Movable Property and its related documents and keeps the records.

**१०-“Notice of Registration”** means a paper (form) that is drawn up in accordance to the procedures for Registration of Securing Charge.

**११- “Purchase money Securing charge”** means a Securing charge on Goods taken or retained by a seller of the Goods to secure all or part of their purchase price. A Purchase money Securing charge:

- i) includes a Securing charge taken by a Person other than the seller who, by providing Financing, gives value that allows the Chargor to acquire ownership of the Collateral;
- ii) includes the right of a seller, lessor, or consignor in a transaction referred to in this Law;
- iii) Includes charges for financing payable to a Chargeholder.

**११. “Default on Payment”** means failure to pay a Debt or its instalment when due as stated in the Securing agreement.

**११. “Default on Performance”** means failure to perform an obligation when due as stated in the Securing agreement.

**29- “Documents of title”** means a written document prepared in accordance with the law that proves ownership or the right to possess Movable Property

**30-“Security”** means a negotiable financial instrument.

**31-“Person”** means a natural or juridical person.

**32-“Finance” or “Financing”** means

- i) an accommodation or facility provided on the basis of participation in profit and loss, mark-up or mark-down in price, hire, purchase, equity support, lease, rent-sharing, licensing, charge or fee of any kind, purchase and sale of any Movable Property including commodities, patents, designs, trade mark, and copy rights, bill of exchange, promissory notes or other instruments with or without buy back arrangement by a seller, and participation *in morabah, musawama, istisnah* or *modaraba* terms of Financing;
- ii) a credit card or charge card arrangement between a Lender and Debtor;
- iii) a guarantee, letter of credit or any other financial commitment a Lender may provide to a Debtor or a Chargor;
- iv) a loan, an advance, overdraft, a bill of exchange that is discounted and purchased or any other financial commitment provided by a Lender to a Chargor or a Debtor.

**33-“Chargor’s Location”** means a Chargor principal place of business or his residence if there is no place of business. A corporation is located where it was incorporated.

**34. “Completion”** means optimization of a chargeholder’s rights in collateral against third parties such as buyers, other chargeholders or insolvency administrator

**35. “Lien”** means an involuntary right in movable property of a Debtor which is given to secure performance of obligations.

**36. “Lienholder”** means a natural or juridical person which holds a lien in movable property.

**37. “Document”** means a document of title, or a receipt such as a bill of lading, or warehouse receipt, issued to prove the ownership or transmitting or storing goods.

### **Scope of Application of the law on Transactions**

#### **Article Four:**

- (1) This Law applies to transactions that create Securing charge on Movable Properties.
- (2) Provisions of this Law shall apply to the following transactions and Securing agreements:

- 1- Contract to provide Finance;
  - 2- Contract for the sale of Goods providing for reservation of title by the seller until payment of the purchase price and the fulfilment of any other obligation;
  - 3- Transaction involving the sale of an Account;
  - 4-Transaction involving transfer of possession of Goods or consignment of Movable Property from the owner (consignor) to another Person (consignee) for the purpose of sale, or
  - 5- Lease of Goods having a term of more than one year.
- (3) When Consumer Goods appear in a Securing agreement or any related agreement, a natural person can not waive or limit any rights or remedies provided in this Law. Any such waiver or limitation cannot affect the transaction or decrease its value.

**Scope of Application of the law on Parties**

**Article Five:**

- (1) The rules applicable to a Chargeholder in this Law apply in the same way to the following persons:
- 1-The Lender that provides a debtor with Financing secured by movable property
  - 2-The seller under a contract for the sale of a Goods providing for reservation of title by the seller;
  - 3- The buyer of an Account;
  - 4-The consignor of the properties stated in the agreement; or
  - 5-The lessor under a lease contract having a term of more than one year.
- (2) The rules applicable to a Chargor, apply in the same way to the following persons:
- 1- The owner of Collateral when the Collateral is used to secure Finance;
  - 2- The buyer under a contract for the sale of Goods providing for reservation of title by the seller;
  - 3- The seller of an Account;

- 4- The consignee of the properties stated in the agreement;
- 5- The lessee under a lease of Goods having a term of more than one year.

### **Securing charges**

#### **Article Six:**

Obligations that may be subject to securing charge are as follows:

- 1- A monetary obligation or one capable of being valued in money.
- 2- A Debt may be that of the owner of the Movable Property or the Debt of other Persons.

## **Chapter Two**

### **Creation of Securing charge and its effects**

#### **Creation of a Securing charge**

##### **Article Seven:**

A Securing charge can be create and becomes enforceable against the Chargor when the following conditions are met:

- 1- The Chargor and the Chargeholder sign a written Securing agreement that describes the Debt and the Collateral
- 2- The Chargor is one of the following persons:
  - the owner of the Collateral, or his authorize agent;
  - a buyer in a contract for a sale of Goods with right of ownership;
  - the seller of Accounts;
  - the consignee; or
  - a lessee under a contract for a lease of Goods having a term of more than one year; and
- 3- The Chargeholder is bound through a signed contract to provide Finance to the Chargor, or to another Person, or perform any other act for or at the request of the Chargor, or, prior to execution of the Securing agreement; the Chargeholder advanced money or provided Finance to or at the request of the Chargor.

## **Securing agreement**

### **Article Eight:**

- (1) A Securing agreement may include more than one securing charge and be evidenced by one or more documents.
- (2) The Collateral will be described reasonably. This may refer to kinds of Movable Property to be acquired by the Chargor in the future.
- (3) Debt amount and date of payment should be clearly identified at Securing agreement.

## **Timing of a Security Charge**

### **Article Nine:**

- (1) The Securing charge on Collateral arises when the Chargor acquires ownership of the Collateral and signs the Securing agreement.
- (2) The Securing charge on Collateral arises when the Chargor receives possession of the Goods and is one of the following persons:
  - 1- Buyer of Goods (where the seller maintains reservation of title)
  - 2- Consignee
  - 3- Lessee of Goods for a term of more than one year.
- (3) When the Chargor is the Transferor of an Account, the Securing charge arises when the Account was created.

## **Rights and Duties of a Chargeholder who possessed the collateral**

### **Article Ten:**

- (1) The Chargeholder shall use reasonable care in the custody and preservation of Collateral in his possession.
- (2) Any necessary expenses and legal obligations incurred by the Chargeholder, which are related to the protection of the Collateral, are obligations of the Chargor and considered part of the Securing charge against the Collateral.
- (3) Unless otherwise agreed by the parties, the Chargeholder may hold as additional Collateral any increase in value or profits received from the Collateral.

## **The Right to Request Information**

### **Article Eleven:**

- (1) A Chargor, an Execution creditor or a Chargeholder with a Securing charge on the Chargor's Movable Property has the right to request that:
  - 1- The Chargeholder approve or correct a list of the Collateral;
  - 2- The Chargeholder approve or correct a statement indicating what the Chargeholder believes to be the aggregate amount of unpaid Debt up to a specified date, or
  - 3- The Chargor be given a copy of the Securing agreement.
- (2) The Chargeholder is obliged to comply with clause (1) of this Article within 14 days of receipt of the request or will be treated as outlined in the procedures.

## **Chapter 3**

### **Effect of a Securing charge against Third Parties**

#### **Completion of a Securing charge**

##### **Article Twelve:**

- (1) A Securing charge is completed when it has attached to the Collateral as provided in Article (V) of this Law and one of the following requirements is met:
  - 1- The Securing charge is registered as provided in this Law
  - 2- The Chargeholder, or agent of the Chargeholder who is not the Chargor, has taken physical possession of the Collateral pursuant to a Securing agreement
  - 3- A provision of this Law states that the Securing charge is completed.
- (2) If a Securing charge is completed by one method established in paragraph (1) of this Article and is again completed by a different method established in paragraph (1) of this Article without a lapse in completion, such Securing charge is considered to have been completed continuously.
- (3) When there is a Securing charge on Goods in the possession of bailee, the bailee issues a Document of title under the name of the Chargeholder, or the bailee agrees to keep the Goods on behalf of the Chargeholder.



- (4) A lien on collateral is completed when it is registered as provided in this law.

### **Temporary Completion and Collateral Returned to the Chargor**

#### **Article Thirteen:**

- (1) A Securing charge on an instrument or a Security that was completed by possession with the Chargeholder or his agent, remains completed without the need for Registration for 20 days after the Collateral comes under the control of the Chargor for the purpose of sale, exchange, presentation, collection, Registration or transfer.
- (2) A Securing charge in Goods that was completed by following manners, remains completed without the need for Registration for 20 days after the Goods come under the control of the Chargor for the purpose of sale, exchange, handling or any dealing in a manner preliminary to their sale or exchange.

1- Possession of the Chargeholder

2- Issuance of a document of title in the name of the Chargeholder

3- Possession by a Person who has agreed to keep the Goods on behalf of the Chargeholder.

- (3) After expiration of period stated in clause (2) of this Article the Securing charge ceases to be complete unless the Chargeholder reinstates the Securing charge by one of the methods provided in this Law.
- (4) A buyer or lessee who buys or leases the Collateral during the 20 day period described in this Article takes free from the Securing charge if he had no Knowledge of this charge at the time of such sale or lease.

### **Effect, Continuity and Proceeds of Collateral**

#### **Article Fourteen:**

- (1) When an Account is subject to a Securing charge, the Chargeholder has the same rights against a guarantor of the Account as that of the Chargor.
- (2) Except as otherwise provided in this Law, a Securing charge continues in the Collateral after its disposal. Disposal includes the sale, lease, license, exchange or other means unless the Chargeholder authorized such disposal free of the Securing charge.
- (3) Following disposal of Collateral, a Securing charge attaches to the receipt of money, other identifiable Movable Property and insurance Proceeds paid after damage or loss to the Collateral (Proceeds collateral).

(4) The completion and priority of a Securing charge on Proceeds collateral are the same as the completion and priority of the Securing charge on the original Collateral if:

1- Registration of the original Securing charge on the Collateral included a description of Proceeds collateral;

2- Proceeds collateral is the same type as the original Collateral;

3- Proceeds collateral is in form of money, a cheque or a deposit with a financial institution.

### **Priority between securing charges**

#### **Article Fifteen:**

(1) A Chargor may grant more than one Securing charge over the same Collateral.

(2) Priority is determined as below, unless otherwise provided by other laws.

1-A completed Securing charge or lien has priority over an incomplete Securing charge or lien.

Priority among incomplete Securing charges is determined on the basis of the first Securing charge to attach to the Collateral.

2-Priority between two or more completed Securing charges or liens is determined on the basis of following factors:

- the order of registration
- possession of the Collateral by Chargholders,
- Completion of Securing charges or liens by other methods stated in this law.

3- Priority stated in above paragraph is valid where there is no time after the registration during which a registered notice is not effective or completion does not exist.

4-A Purchase money Securing charge on Inventory, or its Proceeds collateral, has priority over another Securing charge on the same Inventory if it is completed and the Chargeholder with the Purchase money Securing charge notifies the earlier Chargeholder by the time the Chargor obtains possession of the Inventory. The notification must state that the Person giving the notification has, or expects to take, a Securing charge on the Inventory and must contain a description by item or type.

5- A Purchase money Securing charge on the following terms has priority over any other Securing charge on the same Collateral given by the Chargor.

- Collateral or its Proceeds collateral, other than intangibles or Inventory, that is completed not later than 20 days after the day on which the Chargor, or another Person at the request of the Chargor, obtains possession of the Collateral

- An intangible or its Proceeds collateral that is completed not later than 20 days after the day on which the Securing charge on the intangible attaches

### **Priorities over Incomplete Securing charges**

#### **Article Sixteen:**

- (1) If the Securing charge is not completed, a claim of an Execution creditor has priority over such charge if:
  - 1- The chargholder has not registered a Registration Notice before the creditor becomes an Execution creditor; or
  - 2- The Chargeholder had Knowledge of the existence of the Execution creditor before completion of Securing charge.
- (2) The right of the buyer of Collateral who bought it without Knowledge of an incomplete Securing charge, and before it is completed, has priority over such charge.
- (3) The right of the lessee of Collateral that took possession without Knowledge of completion of Securing Charge, has priority over such charge.

### **Priority of Securing Charges and Future Advances**

#### **Article Seventeen:**

- (1) The priority of a Securing charge extends to all money advanced for Financing, present or future, under the Securing agreement or a related agreement.
- (2) A completed Securing charge does not have priority over the rights of an Execution creditor after the Chargeholder had Knowledge of the Execution creditor, when:
  - 1- The money is advanced to someone other than the Chargor;
  - 2- The Chargeholder has incurred reasonable expenses for the preservation, maintenance or repair of the Collateral.
- (3) The Chargeholder is not required to advance money to Finance the Chargor if the Collateral is seized and restrained by the order of the Court.

## **Rights of Buyers and Lessees of Collateral**

### **Article Eighteen:**

- (1) A buyer who pays reasonable value for collateral takes free of a complete or incomplete Securing charge on the Goods, even if the buyer has Knowledge of the Securing charge.
- (2) A lessee that pays reasonable value for leased collateral takes free of a complete or incomplete Securing charge on the Goods, even if the lessee has Knowledge of the Securing charge.
- (3) Any buyer and lessee take free of any Securing charge on Goods for purchases or leases under Afs 5,000.
- (4) A buyer or lessee of Goods to be used for farming purposes who buys or leases such Goods without Knowledge of a Securing charge take free of a complete or incomplete Securing charge if the purchase price of the Goods or, in the case of a lease, the market value of the leased Goods, does not exceed Afs 50,000.
- (5) A person who receives cash for value takes free of a completed securing charge in the cash.
- (6) A buyer or lessee of a motor vehicle takes free of a securing charge if the buyer or lessee does not know of the securing charge and if the serial number is not included on a registered notice of securing charge.
- (7) A lien holder who takes control of collateral or causes collateral to be seized in favour of him/her self before a securing charge is completed takes free of the securing charge.

## **Preferences of Claims from Service Provider**

### **Article Nineteen:**

If a Person in the ordinary course of his business furnishes services or materials with respect to Collateral, a right in such Collateral exists up to the value of such materials or services that has priority over any complete or incomplete Securing charge.

## **Priorities among Securing charges Attached to Immovable Property**

### **Article Twenty:**

- (1) A Securing charge on crops or Movable Property attached, or intended to become attached to Immovable Property have the rights and priorities provided in this Law to the extent that they do not conflict with provisions of law for Mortgages on Immovable Property.

- (2) A Securing charge on crops or Movable Property attached to Immovable Property has priority over the rights of the owner of the Immovable Property at the time the crop is planted, or at the time Movable Property is attached to Immovable Property. This same Securing charge, if completed, has priority over the rights of an Execution creditor or a Person who later acquires ownership or takes a mortgage on the Immovable Property.
- (3) Upon Default on Payment or Default on performance of obligations a Chargeholder who has priority under this Article may remove the crops or Movable Property from the Immovable Property.

### **Securing charges on Goods Attached to Movable Property**

#### **Article Twenty One:**

- (1) Accession occurs when Goods are attached to other Goods in such a manner that they have not lost their separate identity and can be separated without expense or without causing damage. A Securing charge on Goods continues after accession occurs.
- (2) If a Securing charge is completed after accession occurs, it remains completed and has priority over the rights of:
  - 1- The owner of Goods to which the charged property attached to;
  - 2- An Execution creditor, and
  - 3- A Person who later acquires ownership or becomes a Chargeholder of the Goods.
- (3) Upon Default on Payment or Default on Performance and subject to the provision of Chapter 5 of this law, a Chargeholder who has priority under this article may remove his Movable Collateral from Goods after accession occurs.

### **Priority of Securing charges on Commingled Goods**

#### **Article Twenty Two:**

- (1) A Securing charge may not be created in commingled goods except that, if Collateral becomes part of commingled Goods, any Securing charge attaches to the product. The Chargeholder may enforce his Securing charge on the product only to the extent of the value of the original Collateral, before it became part of commingled Goods.
- (2) If more than one Securing charge attaches to a product, a completed Securing charge has priority over one deemed an incomplete Securing charge at the time the Collateral became part of commingled Goods.

- (3) When there is more than one completed Securing charge on the product, the Securing charges rank equally in proportion to the value of the Collateral at the time the Goods were commingled.

**Preference Relating to Instruments, Securities and other Items**

**Article Twenty Three:**

- (1) A Securing charge over an instrument acquired by a Person in a manner provided under the Law of Banking in Afghanistan takes priority over a completed Securing charge, provided that the prior securing charge is not noted on the instrument.
- (2) A Person that buys a Security, or has a Securing charge on such Security, has priority over a completed Securing charge if this Person acquired the Security or Securing charge for value and if the securing charge was not noted on the Security.
- (3) A Transferee who obtains a Document of title has priority over the other's Securing charge on Goods contained in the Document of title if:
- 1- Transferee gives value for and takes possession of the Document of title without Knowledge of the Securing charge.
  - 2- The transfer is completed according to the requirements contained in the Document of title.
- (4) A possessor of money has priority over a Securing charge given on the money if the possessor acquired the money without Knowledge of the Securing charge. When the possessor gives valuable Property or assumed an obligation in exchange for the money, the possessor has priority whether or not he had Knowledge of the Securing charge.
- (5) A creditor who receives money toward payment of a Debt has priority over a Securing charge on the money paid on this Debt. This applies whether or not:
- The creditor had Knowledge of the Securing charge at the time of payment,
  - The payment was made through the use of an instrument, a Security, an electronic funds transfer, a manual funds transfer, a debit or a similar mode of payment.

## **Subordination agreement**

### **Article Twenty Four:**

A Person with a Securing charge that has priority under this Law may agree to modify or forego his priority in favour of other Chargolders. This is referred to as a subordination agreement. A subordination agreement must be in writing and recorded in the Registry in accordance with provisions of this law.

## **Chapter Four**

### **Transfers**

#### **Transferring Responsibilities of Chargor and Debtor**

##### **Article Twenty Five:**

- (1) Unless otherwise stated in this Law, the rights and responsibilities of a Chargor and Debtor in a Securing agreement and regarding a Debt can be transferred to another Person after consent of the Chargeholder.
- (2) The existence of a Securing charge or permission for the Chargor to dispose, use or transfer Collateral does not, by itself, impose liability upon a Chargeholder for the acts or omissions of the Chargor.

#### **Transferring rights of the Chargholder**

##### **Article Twenty Six:**

- (1) A Chargeholder may transfer his right to receive payments on a Debt, along with related Collateral, to a Transferee without permission of the Account Debtor.
- (2) A transfer is enforceable upon written Notice to the Account Debtor. Notice is not required for creation, attachment or completion of a Securing charge on an Account.

#### **Rights of a Transferee**

##### **Article Twenty Seven:**

- (1) Unless otherwise stated in the Securing agreement, the rights of a Transferee against the Account Debtor are subject to:
  - 1- All the terms of the Securing agreement or any related agreement between the Transferor and the Account Debtor, and
  - 2- Any other defense or claim of the Account Debtor against the Transferor, which accrues before the Account Debtor receives a written Notice of transfer .

- (2) Claims of an Account Debtor may be asserted against the Transferee under this article only to reduce the amount of the Accounts.
- (3) Modification or substitution of a contract between the Transferor and the Account Debtor is effective against a Transferee if it is made in good faith and is in accordance with reasonable commercial standards.

### **Account Debtor's duty**

#### **Article Twenty Eight:**

- (1) An Account Debtor may discharge its Debt by paying the Transferor before he receives a notification that the amount due has been transferred to the Transferee. After receipt of such notification, the Account Debtor can only discharge its Debt by paying the Transferee. A notification is effective if it reasonably identifies the Accounts transferred.
- (2) If requested by the Account Debtor, the Transferee must furnish within a reasonable period of time proof that the transfer was made. In the case that transferee refuse to presence such proofs, the Account Debtor is discharged from its obligation to pay the Transferee, even if the Account Debtor has received a notification.
- (3) An Account Debtor that has received notification of a transfer is entitled to a release from any further obligation to the Transferor, provided that there is no outstanding charge and Transferor has no commitment to provide more Financing or incur an obligation.

The release shall be sent within three business days after the Transferor receives a request from the Account Debtor.

## **Chapter 5**

### **Effects of Default on Payment or Default on Performances**

#### **Measures on Default of Payment or Default on Performances**

##### **Article Twenty Nine:**

- (1) Upon Default on Payment or Performance, the Chargeholder may directly Enforce its rights against the Collateral as provided in the Securing agreement.
- (2) The Chargeholder may choose to apply to the court for compulsory enforcement in the case of Default on Payment by Debtor as provided in Article Forty Two.
- (3) All rights, duties and obligations arising from a Securing agreement, must be exercised and performed in a commercially reasonable manner.



## **Collection of an Account, Instrument and Security**

### **Article Thirty:**

- (1) After a Default on Payment or Performance the Chargeholder may inform any Person owing money to the Chargor pursuant to an Account, an instrument or a Security to pay such money directly to the Chargeholder.
- (2) Any costs or expenses incurred while enforcing clause (1) of this Article shall be paid from the funds recovered to the Chargeholder.

## **Enforcement upon Default on Payment or Default on Performance**

### **Article Thirty One:**

- (1) Unless otherwise agreed, a Chargeholder may enforce the Securing agreement upon Chargor's Default on Payment or Default on Performance by:
  - 1- Taking possession of the Collateral according to the provisions of the Law;
  - 2- Rendering Equipments of the Collateral unusable in a reasonable manner without removal from its location whereupon the Chargeholder is considered to have taken possession of such Collateral; and
  - 3- Disposing of the Collateral on the premises of the Debtor or Chargor in accordance with this Law.
- (2) Special protection is provided for natural Persons that repay two-thirds of Debt for Consumer Goods subject to a Purchase money Securing charge. In such cases, any provision in a Securing agreement, or any related agreement, under which the Chargeholder may upon Default take possession of, or resell, the Consumer Goods is not enforceable under this Law unless:
  - 1- The Chargor voluntarily allows possession by the Chargeholder,
  - 2- Permission of the court is granted in respect of the possession.

## **Disposal of Collateral**

### **Article Thirty Two:**

Upon Default on Payment or Default on Performance under a Securing agreement, the Chargeholder may dispose of some or all of the Collateral before or after any commercially reasonable repair, processing or preparation. Proceeds from such disposal shall be applied in the following order:

- (1) To pay reasonable expenses of the Chargeholder, including cost of insurance, payment of taxes and any costs incurred in taking, holding, repairing, processing, preparing the Collateral for disposal and other expenses as stated in the Securing agreement;
- (2) To pay the Debt covered by the Securing agreement;
- (3) To pay any surplus funds to other Chargeholders and lien holders in order of priority; and
- (4) To pay any remaining funds from clause (3) to the Chargor.

**Method of Disposal and it's Effects.**

**Article Thirty Three:**

- (1) Any or all of the Collateral may be disposed of by:
  - 1-Public sale, private sale, lease or otherwise, subject to provision of this law, and may take place at any time or place and on any terms that are considered commercially reasonable; or
  - 2-Purchase by the Chargeholder at a public sale for a purchase price considered at or near the commercial value of the Collateral purchased.
- (2) Disposal of Collateral in accordance with this law terminates the Chargeholder's Securing charge, any subordinate Securing charge and the Chargor's interest in the Collateral.
- (3) Any person that is liable to a Chargeholder under a guarantee, endorsement or similar agreement, and pays the Debt, and receives a transfer of Collateral from the Chargeholder, will succeed to the rights and duties of the Chargeholder. Such a transfer is not considered a disposal of Collateral.

**Seizure and Disposal of Collateral on Premises**

**Article thirty Four:**

- (1) When the Collateral is of a kind that cannot readily be moved from the premises of Debtor or Chargor, or is of a kind for which adequate storage facilities are not readily available, the Collateral may be seized or disposed without removing it from it's place.
- (2) The Chargeholder must not sell the Collateral from the premises if this causes a major hardship to the Debtor or Chargor, or requires costs that are more than is necessary for the disposal.

- (3) The Collateral may be sold by the Chargeholder in its existing condition or after repair by the Chargeholder. Proceeds from such disposal shall be applied in the following order:

1-To pay reasonable expenses of the Chargeholder, including cost of insurance, payment of taxes and any costs incurred in taking, holding, repairing, processing, preparing the Collateral for disposal and other expenses as stated in the Securing agreement;

2-To pay the Debt covered by the Securing agreement;

3-To pay debts owed to other Chargeholders and lien holders in order of priority that were duly notified of the disposal and responded to such Notice; and

4-To pay any remained funds to the Chargor.

### **Notice of Disposal**

#### **Article thirty five:**

The Chargeholder shall give Notice of disposal not less than fifteen (15) days prior to disposal of the Collateral to the Chargor and to any other Chargeholder or lien holder who has registered in the Registry. Such Notice shall include:

- (1) A description of the Collateral;
- (2) The unpaid amount of the Debt secured under the Securing agreement;
- (3) The amount of costs and expenses or, where this amount has not been determined, a reasonable estimate;
- (4) A statement that, on payment of the total unpaid amount in (2) and (3) above, a Person entitled to receive Notice may redeem the Collateral;
- (5) A statement that, unless the Collateral is redeemed by a person entitled to Notice, it is subject to disposal and the Debtor and/or Chargor may be liable for the total unpaid amount of the Debt not recovered from the disposal; and
- (6) The day, time and place of any sale by public auction, the place to which closed tenders may be delivered, and the day after which closed tenders will not be accepted, or other affairs related to disposal of the Collateral.

### **Notice not required**

#### **Article Thirty Six:**

Notice of disposal is not required when:

- (1) The Chargeholder has reason to believe that the Collateral consists of perishable items or will decline substantially in value if not disposed of immediately;
- (2) The cost of care and storage of the Collateral is disproportionately large in relation to its value; or
- (3) After Default on Payment or Default on Performance, each Person entitled to receive Notice consents in writing to disposal of the Collateral.

### **Report after Disposal**

#### **Article Thirty Seven:**

The Chargeholder shall give a written accounting of all the following information to the Chargor and other Chargeholders and lien holders not later than seven (7) business days after receipt of a written request:

- (a) The amount received from the disposal of Collateral;
- (b) The amount applied to costs and expenses;
- (c) The amount applied to the Debt; and
- (d) The amount of any surplus and how it was distributed.

### **Notice for possession**

#### **Article Thirty Eight:**

- (1) After Default on Payment or Default on Performance, the Chargeholder may send Notice for taking possession of the Collateral, or a portion of it, in satisfaction of all or a part of the Debt secured by the Securing agreement to the following persons:
  - (a) The Chargor; and
  - (b) Other Chargeholders and lien holders who, prior to the day on which such Notice is issued to the Chargor are registered in the relevant office.
- (2) Any Person stated in clause (1) of this Article may object within 15 (fifteen) days after receiving Notice.
- (3) If no Notice of objection is given during the term stated in clause (2) of this Article, it is considered that Chargeholder definitely decided to take the collateral in satisfaction of the Debt and is entitled to hold or dispose of such Collateral free of any rights of the Chargor or any other Chargeholder who was given a Notice.

## **The Right of the Chargor to Redeem the Collateral**

### **Article Thirty Nine:**

- (1) At any time before the Chargeholder has disposed or contracted for disposal of the Collateral, or before the Chargeholder choose to retain the Collateral, the Chargor or any other Chargeholder or lien holders may redeem the Collateral by paying all unpaid Debt to the Chargeholder. If applicable, the Chargor or other Chargeholder or lien holders must also pay the Chargeholder reasonable expenses for seizing, holding, repairing, and preparing the Collateral for disposal.
- (2) The Chargor may provide a written waiver of his right to redeem Collateral after Default on Payment or Default on Performance.

## **Protection of Buyers of Collateral**

### **Article Forty:**

When a Chargeholder disposes of Collateral to a buyer for value, such buyer acquires the Collateral free from the Chargor's rights and any claims by subordinate Chargeholders or lien holders.

## **Exclusions in Enforcement of Provisions of this Chapter**

### **Article Forty One:**

Provision of this Chapter is not enforceable against consignment and leasing transactions.

## **Chapter 6**

### **Role of the Court and Rights of Protection**

#### **Possession or Disposal to the court**

##### **Article Forty Two:**

- (1) If the Chargeholder cannot or chooses not to take possession of the Collateral as provided in Article Thirty One, and elects to take possession of Collateral or dispose of such Collateral pursuant to Article Twenty Nine, clause (2), he may request in writing that the court order compulsory enforcement. The court may rule on the Chargeholder's request by the following manner, within 15 days:
  - 1- Deliver Collateral to the Chargeholder, or his agent, for disposal;
  - 2- Dispose of the Collateral;
  - 3- Require Persons to pay fees and expenses as provided in the related procedures, or

- 4- Seize the Collateral.
- (2) Neither the court nor the police officer is required to give prior Notice to proceeding with clause (1) of this Article. Before disposing of the Collateral, the court shall give the same notice as required by Article Thirty Five to be given by the Chargeholder.
- (3) A third party who has rights to the Collateral and is affected by seizure or disposal of the Collateral may apply to the court to:
- 1) Stop proceedings on a basis in fact that a Default on Payment has not occurred;
  - 2) Temporarily or permanently suspend the court decree if the Chargeholder has not complied with this Law; or
  - 3) Amend the distribution of money from the disposal of Collateral, within 30 days after distribution.
- (4) The court will rule on application referred to in clause (3) of this Article within 15 (fifteen) days from the date the application is filed with the court.

## **Chapter 7** **Miscellaneous Decrees**

### **Restriction on application of the Law**

#### **Article Forty Three:**

This Law does not apply to:

- 1-A transfer of a claim for compensation of an employee;
- 2- A sale of Accounts as part of a sale of the business out of which they arose;
- 3- A transfer of a right to payment under a contract to a Transferee that is also obliged to perform under the contract;
- 4- A transfer of a right to payment under a mortgage on Immovable Property or payments made under a lease of Immovable Property;
- 5-A transfer of Accounts made solely to facilitate the collection of Accounts for the Transferor;

6- A transfer of a right represented by a court decree, other than one taken on payment of Debt that was subject to a Securing charge under this Law, or

7- A transaction subject to other legislations of Afghanistan or international convention or treaty that Afghanistan joined with.

**Registration of securing charge:**

**Article forty four:**

(1) Registry establish by Da Afghanistan Bank.

The Registry shall provide electronic means for registration of notice of Securing Charges and liens, and for searching for notices. The electronic registries existed in the office are valid.

**Settlement of disputes**

**Article forty five:**

Claims and disputes regarding priority of Securing charge and remedies will be resolved by authorized court.

**Application of the Law**

**Article forty six:**

(1) The validity, completion, and priority of a Securing charge on the following cases is governed by the law where the Chargor is located when the Securing charge is completed.

1- An Account, instrument, a Security or money completed by Registration, or

2- A motor vehicle that is not Consumer Goods, an aircraft, or railway car that is not Inventory.

(2) The validity, completion, and priority of a Securing charge on the following cases are governed by the law where the Collateral is located when the Securing charge is completed:

1- A motor vehicle that is Consumer Goods;

2- An instrument, Security or money when the Instrument, Security or money is in possession of the Chargeholder, or

3- Goods which are not referred to in clause (1) of this Article.

- (3) This Law does not apply to a transaction executed before the effective date of this Law.

### **Securing charge on Imported Goods**

#### **Article Forty Seven:**

When Collateral is Goods taken from another country, a Securing charge continues to be completed in Afghanistan if it is completed in Afghanistan not later than thirty (30) days after the date on which the Collateral entered Afghanistan. A buyer or lessee of the Collateral takes free from the Securing charge if the sale or lease occurs before the Securing charge is completed in Afghanistan.

### **Creation of Procedures**

#### **Article Forty Eight:**

For the purpose of better implementation of the provisions of this Law, Da Afghanistan Bank may establish appropriate procedures and regulations.

### **Priority between Provisions**

#### **Article forty Nine:**

If any other provisions of law conflict with provisions contained in this Law, the provision of this Law shall be preferred.

### **Effective Date**

#### **Article Fifty:**

This Law shall enter into force when signed and shall be published in the Official Gazette.