

MOTOR VEHICLE SECURITIES BILL

EXPLANATORY NOTE

THIS Bill provides for the establishment of a system of registration of security interests in motor vehicles.

The principal objects of the system are—

- (a) To protect purchasers of motor vehicles that may be subject to security interests; and
- (b) To protect holders of security interests in motor vehicles in the event of debtors disposing of the vehicles.

At present, certain security interests in motor vehicles may be registered under the Chattels Transfer Act 1924. This system is unsatisfactory for 2 main reasons—

- (a) The register kept under that Act is decentralised, and a purchaser is required to search in the registers kept in more than one High Court Registry; and
- (b) It does not cover security interests such as certain hire purchase agreements.

By reason of these shortcomings, a purchaser of a motor vehicle has no practical way of knowing whether or not a person who purports to sell a motor vehicle is able to sell it. This may have undesirable consequences for the purchaser. For example, if the seller does not own the vehicle, but is only the hirer of the vehicle, then the purchaser will have to surrender the vehicle to the real owner.

The Bill enables intending purchasers of motor vehicles to search a centralised register to discover whether or not the motor vehicle is subject to a security interest. If no security interest is registered, and the intending purchaser has no notice that a security interest exists in respect of the vehicle, then any security interest is, in most cases, extinguished and the purchaser becomes the owner of the vehicle.

An intending purchaser of a motor vehicle is further protected in that if the purchaser buys a vehicle from a licensed motor vehicle dealer, then any security interest in respect of the vehicle is, in most cases, automatically extinguished and the purchaser becomes the owner of the vehicle. Dealers will be able, before selling the vehicle, to search the register created by the Bill to ascertain that no security interests exist.

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incl. GST \$5.70

The Bill does not protect a person who "buys" a vehicle from a thief. It only deals with the problems of lack of ownership caused by security interests. However, provision is made for the register to record the fact that any vehicle has been reported as stolen by the Commissioner of Police. This procedure may alert some purchasers to the fact that a vehicle has been stolen.

The Bill also enables holders of security interests to register their security interests on a centralised register. If that is done, the security interest will not be defeated by the debtor purporting to dispose of the vehicle. This is subject to the important exception that the security interest will be defeated, even though registered under the Bill, if the vehicle is disposed of by a licensed motor vehicle dealer. In such a case, however, the secured party will have a claim against the dealer, and, if the dealer does not pay, against the Motor Vehicle Dealers Fidelity Guarantee Fund.

The Bill also amends, in certain respects, the law relating to the disposition and the creation of interests in motor vehicles subject to security interests.

Clause 1 relates to the Short Title and commencement. *Parts I and V* are to come into force on 1 October 1989. The remaining provisions of the Bill are to come into force 6 months later on 1 April 1990. *Part I* contains the procedural provisions relating to registration of security interests. *Part V* contains transitional provisions. Existing security interests may be registered in a 6-month transitional period commencing on 1 October 1989.

Clause 2 defines certain terms used in the Bill. The consequences of 2 of the most important definitions are as follows:

- (a) All motor vehicles will be subject to the Bill if they are registered under the Transport (Vehicle and Driver Registration and Licensing) Act 1986. Thus, not only cars are covered by the Bill but also, for example, trailers and caravans. Regulations may also be made to bring other types of vehicles under the Bill:
- (b) The security interests that will require registration under the Bill include any interest in or power over a motor vehicle, whether arising by or pursuant to a document or transaction, which secures the payment of a debt or the performance of any other obligation. Leases, hire purchase agreements, mortgages, interests under retention of title clauses, and fixed charges created by a company or society are all specifically included in the definition of "security interest" in the Bill if they relate to a motor vehicle. Floating charges created by a company or a society are not registrable under the Bill.

Clause 3 provides that the Bill is to bind the Crown.

PART I

REGISTRATION

Clause 4 provides for the appointment of a Registrar of Motor Vehicle Securities.

Clause 5 requires the Registrar to establish and maintain a register of security interests in motor vehicles.

Clause 6 provides that a holder of a security interest in a motor vehicle may apply for the registration of that security interest. It is not mandatory for a secured party to do so, and the security interest is not void, except in the circumstances outlined in the Bill, if it is not registered.

Clause 7 specifies the procedure on registration of a security interest and the matters to be entered in the register.

Each security interest is to be registered in the order of time in which the application is received by the Registrar.

Clause 8 enables the Registrar to enter in the register the fact that any motor vehicle has been reported as stolen by the Commissioner of Police.

Clause 9 enables any person to make an oral enquiry whether or not any security interest is registered in respect of any specified motor vehicle. The Registrar is required to state whether any security interest is registered in respect of that vehicle and also whether the vehicle has been reported as stolen by the Commissioner of Police.

Any person who suffers loss or damage by reason of any incorrect statement made by the Registrar under this section may claim compensation under *clause 47* of the Bill.

Clause 10 enables any person to apply to the Registrar for a certificate in respect of the motor vehicle specified in the application. The Registrar is required to issue a certificate stating whether or not the vehicle is affected by a registered security interest, and if so, the registered particulars of that security interest. The Registrar is also required to state whether the vehicle has been reported as stolen by the Commissioner of Police.

Any person who suffers loss or damage by reason of any incorrect certificate issued by the Registrar under this section may claim compensation under *clause 47* of the Bill.

A certificate issued under this section is for information purposes only. It does not guarantee that any other security interest will not be entered in the register after the date on which the certificate was issued and before the purchase is made. Any such security interest, although not revealed on the certificate, will bind any purchaser of the vehicle. Therefore, a purchaser of a vehicle may need to make an oral enquiry under *clause 9* immediately before purchasing the vehicle to ensure that he or she is not bound by any security interest registered in the period between issue of the certificate and purchase of the vehicle.

Clause 11 provides that the amount of the debt or details of the other obligation secured will not be information which is generally available to the public. This is to ensure the privacy of this information to the extent possible.

Clause 12 requires a secured party to apply for cancellation of a security interest within 10 working days of the security interest being discharged or within 10 working days of becoming aware that the security interest has been extinguished. Security interests can also be cancelled at other times on the application of the secured party.

Clause 13 provides that failure to comply with *clause 12* is an offence carrying a fine not exceeding \$1,000.

Failure to comply with *clause 12* also makes the secured party liable to pay compensation for any loss or damage suffered by any other person.

Clause 14 provides a procedure whereby the debtor, or a purchaser of a vehicle from a dealer, can apply for cancellation of registration. This can be used if the secured party fails to obtain cancellation after the security interest is discharged or extinguished.

Clause 15 enables the Registrar to cancel the registration of a security interest if it appears to the Registrar that a person entered in the register as the holder of

a security interest was not the holder of that interest or that a security interest may have been discharged or extinguished.

Clause 16 provides that a secured party may apply for the amendment of the register if there is a change in the registered particulars of a security interest. The Registrar is also empowered to make amendments to the register if it appears that the registered particulars of any security interest have been incorrectly entered in the register.

Clause 17 provides that all applications under this Part are to be in a form approved by the Registrar.

Clause 18 provides that any person making an application under this Part must pay any fee that has been prescribed in respect of that application.

Clause 19 requires the Registrar to record the date and time of each cancellation of a security interest or amendment of the register.

Clause 20 makes it an offence to make a statement or supply any information for the purposes of obtaining or retaining the registration of a security interest, or of obtaining the cancellation of any security interest, if the person knows that the statement or information is false or misleading in a material particular. The offence carries a fine not exceeding \$2,000.

Clause 21 exempts the Crown, the Registrar, and other administrators from liability for acts and omissions in the keeping of the register, except where bad faith is involved. *Clause 47* does, however, confer wide rights to compensation on any person suffering loss by reason of certain of those acts and omissions.

PART II

DISPOSITIONS OF MOTOR VEHICLES SUBJECT TO SECURITY INTERESTS

Dispositions by persons other than dealers

Clause 22 provides for the extinguishment of a security interest in a motor vehicle in certain circumstances where the sale of the vehicle is from a person other than a dealer. The clause applies where the vehicle is purchased from the debtor and the purchaser does not have notice of the security interest at the time when the purchase price is paid or the exchange is made. The security interest will also be extinguished where the vehicle is purchased from a person who is in possession of the vehicle in circumstances where the debtor has lost the right to possession of the vehicle or is estopped from asserting an interest in the vehicle against the purchaser. The clause does not apply where, for example, a thief purports to sell the vehicle.

Ownership of the vehicle passes to the purchaser if the security interest is extinguished under the clause and the secured party owned the vehicle.

Clause 23 contains rules for determining whether a purchaser is without notice of a security interest for the purposes of the previous clause. A purchaser is deemed to have notice of a security interest in various circumstances, including,—

- (a) If the security interest is registered under the Bill; or
- (b) If the purchaser knows that the motor vehicle is subject to a floating charge that is registered under the Companies Act 1955 or the Industrial and Provident Societies Act 1908 and that has become fixed.

Clause 24 relates to the position where a motor vehicle that is subject to a security interest is sold on hire purchase by, or is leased from, a person other than a dealer. In such a case the secured party will be bound by the terms of the

hire purchase agreement or the lease, as the case may be, if the security interest would have been extinguished under *clause 22* if the motor vehicle had been sold outright.

Clause 25 confers rights on a secured party in any case where a secured party is, by reason of *clause 24*, bound by the terms of any subsequent hire purchase agreement or lease.

Dispositions by dealers

Clause 26 provides that where a motor vehicle is purchased from a dealer, any security interest in that vehicle is extinguished and the purchaser becomes the owner of the vehicle, except in a case where prior disclosure of the security interest is made to the purchaser or where the security interest was created by or with the express consent of the purchaser.

The term “dealer” is defined in *clause 2* to mean any person who is licensed as a motor vehicle dealer under the Motor Vehicle Dealers Act 1975.

The clause will have effect despite the fact that the security interest is registered under *Part I* of the Bill.

Clause 27 relates to the position where a motor vehicle that is subject to a security interest is sold on hire purchase by, or is leased from, a dealer. In such a case the security interest in that motor vehicle will be extinguished and, where title in the vehicle was vested in the secured party, title will pass to the dealer, except in a case where prior disclosure of the security interest is made to the hirer or lessee or where the security interest was created by or with the express consent of the hirer or lessee.

Reimbursement of secured party in event of disposition by dealer with notice of security interest

Clause 28 contains rules for determining whether a dealer is without notice of a security interest for the purposes of *clause 29* or *clause 33*. A dealer is deemed to have notice of a security interest in various circumstances, including—

- (a) If the security interest is registered under the Bill; or
- (b) If the dealer knows that the motor vehicle is subject to a floating charge that is registered under the Companies Act 1955 or the Industrial and Provident Societies Act 1908 and that has become fixed.

Clauses 29 to 32 contain provisions designed to protect a secured party where a dealer sells a motor vehicle in circumstances where the dealer has notice that it is subject to a security interest. They enable the secured party to claim from the dealer the amount outstanding in respect of the debt or other obligation that was secured by the security interest. If the dealer does not pay, the secured party may instead claim that amount from the Motor Vehicle Dealers Fidelity Guarantee Fund. The Fund is not, however, liable to pay any amount that is recoverable from the purchaser under *clause 37*. The clauses also provide a right of subrogation for the dealer, or the Fund, to the secured party’s rights against the debtor or the debtor’s estate, as the case may be, and, in the case of the Fund, against the dealer.

Clause 33 contains provisions designed to protect a secured party where a dealer sells a motor vehicle on hire purchase or leases a motor vehicle in circumstances where the dealer has notice that it is subject to a security interest. It enables the secured party to claim from the dealer the amount outstanding in respect of the debt or other obligation that was secured by the security interest. The secured party will also have the same rights against the Motor Vehicle

Dealers Fidelity Guarantee Fund and the debtor or the debtor's estate as are conferred by *clauses 30 and 32*.

Miscellaneous provisions

Clause 34 provides that the provisions of *Part II* of the Bill will have effect, and a security interest in a motor vehicle may be extinguished, despite the fact that the charge which creates or evidences the security interest is registered under the Companies Act 1955 or the Industrial and Provident Societies Act 1908.

Registration of the security interest under the Bill may prevent extinguishment, except in the case of dispositions by dealers. Fixed charges in respect of a motor vehicle may be registered under the Bill; floating charges may not.

Clause 35 deals with a situation where a motor vehicle subject to a security interest is sold and the security interest in the vehicle is extinguished by virtue of the Bill, but then the contract for the purchase of the motor vehicle is cancelled. In such a case, the security interest will revive and continue in full force as if it had not been extinguished. The clause will not apply if the secured party has already been reimbursed in respect of the extinguishment of the security interest.

Clause 36 is a parallel provision to *clause 35*, dealing with the cancellation of hire purchase agreements and leases.

Clause 37 deals with the position where a purchaser of a motor vehicle pays or delivers part only of the purchase price at the time when he or she acquires a motor vehicle. If the vehicle was subject to a security interest that was extinguished by virtue of the Bill, then the secured party is subrogated to the rights of the seller to claim the balance of the purchase price from the purchaser.

Clause 38 protects auctioneers and other agents of the debtor from liability for conversion when selling or otherwise disposing of a motor vehicle subject to a security interest. The protection only applies if the person did not have notice of the security interest at the time when the person sold or otherwise disposed of the vehicle. The protection extends not only to liability for conversion but also to liability for other torts in respect of interests in chattels.

PART III

PRIORITY OF SECURITY INTERESTS

Clause 39 preserves the priority of charges registered under the Companies Act 1955 or under the Industrial and Provident Societies Act 1908. The priority of charges created by a company registered under the Companies Act 1955 or by a society registered under the Industrial and Provident Societies Act 1908 will be determined in relation to each other as if the Bill were not enacted.

Clause 40 provides that a registered security interest will have priority over any unregistered security interest in respect of the same vehicle. "Registered" means registered under the Bill.

Clause 41 provides that the priority of registered security interests in relation to each other will be determined according to the time of registration.

Clause 42 provides that *clauses 40 and 41* are to apply notwithstanding that, at the time when any security interest is registered, the holder of that security interest has notice of an earlier security interest, or that the motor vehicle was in the possession of any other secured party.

Clause 43 provides that the priority of unregistered security interests will be determined according to the time at which each security interest was created or otherwise arose.

Clause 44 deals with the priority of security interests where the terms and conditions are amended to increase the amount of the debt secured. If any conflict of priorities occurs, a holder of a security interest may request the Registrar to supply information as to the amount of the debt or other obligation secured by any other registered security interest.

Clause 45 enables a holder of a registered security interest to apply to the Registrar for the postponement of that security interest to any other registered security interest.

Clause 46 makes this Part of the Bill subject to the provisions of *clause 24* and *clause 27* relating to subsequent hire purchase agreements or leases.

PART IV

MISCELLANEOUS PROVISIONS

Compensation for loss or damage arising from acts or omissions of Registrar

Clause 47 entitles a person who suffers loss or damage by reason of any specified act or omission of the Registrar to apply to the Tribunal for payment of compensation in respect of that loss or damage.

Clause 48 specifies the acts or omissions in respect of which compensation may be payable. They include failure to register a security interest in respect of which an application for registration has been made and the supply of incorrect information in response to an oral enquiry or an application for a certificate.

Clause 49 places limits on the amount of compensation that may be recoverable.

Clause 50 outlines certain situations where compensation may be withheld or reduced.

General provisions

Clause 51 makes it a summary offence punishable by a fine up to \$2,000 to part with possession of or purport to sell a motor vehicle that is subject to a security interest with intent to defraud the secured party.

Clause 52 prevents contracting out of the terms of the Bill. If any agreement contains a term that would modify, restrict, or exclude any provision of the Bill, then the term is of no effect. Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who enters into an agreement that contains a term that is, by reason of this clause, of no effect.

Clause 53 provides that certain provisions of the Chattels Transfer Act 1924 are to continue to apply to agreements creating security interests in motor vehicles.

Clause 54 preserves any rights or remedies that any person may have had if the Bill were not enacted, except to the extent that the Bill expressly provides otherwise.

Clause 55 deals with the power of the Registrar to delegate the functions, duties, and powers exercisable by the Registrar under the Bill.

Clause 56 relates to the service of notices.

Clause 57 relates to offences by officers of companies.

Clause 58 confers power on the Governor-General to make regulations for various specified purposes.

Clause 59 makes consequential amendments to other enactments specified in the *Second Schedule* to the Bill.

PART V

TRANSITIONAL PROVISIONS

Part V provides for a lead-in period of 6 months during which time existing security interests in respect of motor vehicles may be registered under the Bill. Special rules relating to the priority of security interests will apply to security interests registered during that transitional period.

Clause 60 defines 2 terms used in *Part V*. "Commencement date" is defined to mean 1 October 1989. "Transitional period" means the period of 6 months beginning with 1 October 1989 and ending on 31 March 1990.

Clause 61 provides that existing holders of security interests in motor vehicles as at the commencement date, and persons who become holders of security interests in motor vehicles during the transitional period, may apply to the Registrar for registration of the security interests before the end of the transitional period.

Clause 62 provides that every security interest in relation to which an application for registration is received by the Registrar during the transitional period shall have priority according to the date on which the security interest was created or otherwise arose. This is a departure from the ordinary rule that registered security interests are to have priority according to the date of registration, and is designed to facilitate an orderly transition into the new scheme provided by the Bill.

The clause is subject to the rules set out in *clauses 63 and 64*, relating to the preservation of existing priorities where the security interest is registered under the *Chattels Transfer Act 1924* or the *Companies Act 1955*.

Clause 63 provides that where a security interest has been registered under the *Chattels Transfer Act 1924* or the *Companies Act 1955* or the *Industrial and Provident Societies Act 1908*, that security interest will, if registered under the Bill during the transitional period, have the same priority as the priority that the security interest had when registered under that Act.

Clause 64 relates to security interests which were registrable under the *Chattels Transfer Act 1924* or the *Companies Act 1955* or the *Industrial and Provident Societies Act 1908*, but which were not so registered. It provides that such security interests will have priority, if registered under the Bill during the transitional period, according to the date on which the application for registration was received by the Registrar. This clause is designed to guard against the position that holders of unregistered security interests may "queue jump" the priority queue.

Clause 65 provides for the cessation of registration under the *Chattels Transfer Act 1924* in cases where the security interest affects a motor vehicle.

Right Hon. Geoffrey Palmer

MOTOR VEHICLE SECURITIES

ANALYSIS

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A BILL INTITULED

An Act to provide for the registration of security interests in, and other information relating to, motor vehicles, and to amend, in certain respects, the law relating to the disposition and the creation of interests in motor vehicles subject to security interests 5

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Motor Vehicle Securities Act 1988.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the 1st day of October 1989. 10

(3) Parts II to IV of this Act shall come into force on the 1st day of April 1990.

2. Interpretation—(1) In this Act, unless the context otherwise requires,— 15

“Dealer” means a holder of a motor vehicle dealer’s licence issued under section 15 of the Motor Vehicle Dealers Act 1975:

“Debtor”, in relation to a security interest in a motor vehicle,— 20

(a) Means the person who created the security interest; and

(b) Includes,—

- (i) Where the security interest is the interest of a lessor under a lease of a motor vehicle, the lessee of the motor vehicle:
- 5 (ii) Where the security interest is the interest of an owner under a hire-purchase agreement in relation to a motor vehicle, the hirer of the motor vehicle:
- 10 (iii) Where the security interest is the interest of a mortgagee under a mortgage of a motor vehicle, the mortgagor of the motor vehicle:

“Hire purchase agreement”, in relation to a motor vehicle,—

15 (a) Means—

- (i) An agreement whereby a motor vehicle is let or hired with an option to purchase; or
- 20 (ii) An agreement for the purchase of a motor vehicle by instalment payments (whether the agreement describes the payments as rent or hire or otherwise) under which the person who agrees to purchase the motor vehicle is given possession of it before the total amount payable has been paid; but

25 (b) Does not include any agreement under which the property in the motor vehicle comprised in the agreement passes absolutely to the person who agrees to purchase it, at the time of the agreement or upon, or at any time before, delivery of the motor vehicle:

30 “Hirer”, in relation to a hire purchase agreement of a motor vehicle, means the person to whom the motor vehicle is disposed of under the hire purchase agreement:

35 “Lease”, in relation to a motor vehicle, means a contract for the bailment of the motor vehicle but does not include a hire purchase agreement:

40 “Lessee”, in relation to a lease of a motor vehicle, means the person to whom the motor vehicle is bailed under the lease:

“Lessor”, in relation to a lease of a motor vehicle, means the person who bails the motor vehicle to another person under the lease:

45 “Motor vehicle” or “vehicle” means a motor vehicle that is registered under Part I of the Transport (Vehicle

and Driver Registration and Licensing) Act 1986, and any other motor vehicle that is declared in regulations made under this Act to be a motor vehicle for the purposes of this Act:

- “Owner”, in relation to a hire purchase agreement of a motor vehicle, means the person disposing of the motor vehicle under the hire purchase agreement: 5
- “Prescribed” means prescribed by regulations made under this Act:
- “Purchase”, in relation to a motor vehicle, means acquire the motor vehicle from a person selling or exchanging the motor vehicle: 10
- “Purchase price” or “price” includes any valuable consideration:
- “Register” means the register established under section 5 of this Act: 15
- “Registered”, in relation to any security interest, means registered pursuant to section 7 (1) of this Act:
- “Registered particulars”—
- (a) Means, except as provided in section 11 of this Act, the particulars entered in the register in respect of a security interest under section 7 (1) of this Act; but 20
- (b) Does not include any particulars that have been entered in the register but that have been cancelled under any provision of Part I of this Act: 25
- “Registrar” means the Registrar appointed under section 4 of this Act:
- “Secured party”, in relation to a motor vehicle,—
- (a) Means the holder of a security interest in the motor vehicle; and 30
- (b) Includes,—
- (i) Where the motor vehicle is subject to a lease, the lessor:
- (ii) Where the motor vehicle is subject to a hire purchase agreement, the owner: 35
- (iii) Where the motor vehicle is subject to a mortgage, the mortgagee:
- “Security interest”—
- (a) Means an interest in or a power over a motor vehicle, whether arising by or pursuant to a document or transaction, which secures the payment of a debt or other pecuniary obligation or the performance of any other obligation; and 40
- (b) Includes the interest in, or power over, a motor vehicle of— 45

- (i) The lessor of a motor vehicle that is the subject of a lease:
- (ii) The owner of a motor vehicle that is the subject of a hire purchase agreement:
- 5 (iii) The mortgagee of a motor vehicle that is the subject of a mortgage; and
- (c) Includes the title of an owner of a motor vehicle who has contracted to sell the motor vehicle and who has retained title to the motor vehicle until payment of the purchase price or the performance of any other obligation; and
- 10 (d) Includes any charge over a motor vehicle (except a floating charge) created by a company registered under the Companies Act 1955 or by a society registered under the Industrial and Provident Societies Act 1908; and
- 15 (e) Includes, for the purposes of **Part II** of this Act, any floating charge created by a company registered under the Companies Act 1955 or by a society registered under the Industrial and Provident Societies Act 1908 that has become fixed in relation to a motor vehicle; but
- 20 (f) Does not include a possessory lien or pledge:
- 25 “Tribunal” means a Small Claims Tribunal established under section 4 of the Small Claims Tribunals Act 1976:
- “Working day” means any day of the week other than—
 - 30 (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and
 - (b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year.
- (2) Any reference in this Act to a secured party or to a debtor shall, where the rights and obligations of that secured party or debtor have passed by operation of law or assignment to any other person, be deemed to include a reference to that other person, and this Act shall apply to that other person in the same manner as it applies to the person from whom the rights and obligations have passed.
- 40 (3) Any reference in this Act to the time when a purchase price is paid shall, where the purchase price is paid by instalments, be a reference to the time when the first part of the purchase price is paid.

(4) Any reference in this Act to a purchase or other acquisition, or to a sale or other disposition, of a motor vehicle shall include a reference to any purported purchase or other purported acquisition, or to any purported sale or other purported disposition, as the case may require. 5

3. Act to bind the Crown—This Act shall bind the Crown.

PART I

REGISTRATION

4. Appointment of Registrar—There shall be a Registrar of Motor Vehicle Securities who shall be appointed by the Minister of Justice on such terms and conditions as may be determined by that Minister. 10

5. Register of security interests—The Registrar shall establish and maintain a register of security interests in motor vehicles. 15

6. Application for registration—A holder of a security interest in a motor vehicle may apply to the Registrar for the registration of that security interest.

7. Registration—(1) On receipt of an application for the registration of any security interest under this Act, the Registrar shall, if satisfied that the application is in order, register the security interest by entering in the register— 20

- (a) Such details of the motor vehicle as may be necessary to identify it:
- (b) The name and address of the secured party: 25
- (c) The type and term of the security interest:
- (d) The date on which, and the time at which, the security interest was registered:
- (e) The amount of the debt or details of the other obligation secured. 30

(2) Every security interest shall be registered in the order of time in which the application is received by the Registrar.

8. Stolen motor vehicles—(1) The Registrar may, upon receipt of any information from the Commissioner of Police to the effect that any motor vehicle has been reported as stolen or otherwise unlawfully obtained, make an entry in the register to that effect. 35

(2) Any such entry is not an entry of, and does not create, a security interest in the motor vehicle to which the entry relates.

(3) The Registrar may cancel or amend any such entry if the Registrar considers, on reasonable grounds, that cancellation or amendment would be appropriate.

9. Enquiries—(1) Any person may, by oral enquiry to the Registrar, enquire whether or not any security interest is registered in respect of any specified motor vehicle.

(2) If any enquiry is made, the Registrar shall state whether or not any security interest is so registered.

(3) If any enquiry is made in respect of any vehicle in relation to which an entry in the register has been made under **section 8** of this Act, the Registrar shall state that such an entry has been made.

10. Certificate of entry in register—(1) Any person may apply to the Registrar for a certificate in respect of a motor vehicle specified in the application.

(2) On receipt of an application for a certificate, the Registrar shall issue to the applicant a certificate in the prescribed form stating—

(a) Whether or not the vehicle is, at the time, affected by a registered security interest; and

(b) If it is so affected, the registered particulars of that security interest.

(3) If any person applies to the Registrar for a certificate in respect of any vehicle in relation to which an entry in the register has been made under **section 8** of this Act, the Registrar shall issue a certificate containing the particulars of that entry.

(4) Every certificate issued under this section shall state the date and time of issue.

(5) A certificate purporting to be issued by the Registrar under this section shall, without proof of the signature of the Registrar, be admissible in any proceedings and, except in relation to matters referred to in **section 8** of this Act, shall, in the absence of proof to the contrary, be sufficient evidence of the matters contained in the certificate.

11. Information as to amount of debt, etc., not to be generally available—(1) No certificate issued under **section 10** of this Act shall state the amount of the debt or the details of the other obligation secured by any registered security interest.

(2) Except as otherwise provided by **section 44 (6)** of this Act, the Registrar shall not disclose to any person the amount of the debt or the details of the other obligation secured by any registered security interest.

(3) Any reference in this Act (except the reference in **section 16**) to the term “registered particulars” shall not include the particulars entered in the register as to the amount of the debt or the other obligation secured.

12. Secured party required to apply for cancellation of registration on discharge or extinguishment of security interest—(1) Where any registered security interest is discharged, the person entered in the register as the secured party shall, within 10 working days of the date on which the security interest is discharged, apply to the Registrar for the cancellation of the registration.

(2) Where any registered security interest is extinguished under **section 26** or **section 27** of this Act, the person entered in the register as the secured party shall, within 10 working days of the date on which the person becomes aware that the security interest has been extinguished, apply to the Registrar for the cancellation of the registration.

(3) Without prejudice to **subsections (1) and (2)** of this section, any person entered in the register as the holder of a security interest may at any time apply to the Registrar for the cancellation of the registration of that security interest.

(4) On receipt of an application under this section, the Registrar, if satisfied that the application is in order, shall cancel the registration of the security interest.

13. Liability of secured party on failing to cancel registration—(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who fails, without reasonable excuse, to comply with **subsection (1) or subsection (2) of section 12** of this Act.

(2) Any person who suffers loss or damage by reason of the failure of any other person to comply with **subsection (1) or subsection (2) of section 12** of this Act may apply to the Tribunal for an order requiring that other person to pay such compensation as the Tribunal considers just.

(3) The provisions of the Small Claims Tribunals Act 1976 set out in the **First Schedule** to this Act shall apply, so far as they are applicable and with the necessary modifications, to every application under **subsection (2)** of this section.

14. Cancellation of registration on application of debtor or purchaser—(1) Where any registered security interest is discharged and the person entered in the register as the secured party fails to apply for the cancellation of the

registration within 10 working days of the date on which the security interest is discharged, the person who was the debtor may apply to the Registrar for the cancellation of the registration.

5 (2) Where any registered security interest is extinguished under **section 26** or **section 27** of this Act, and the person entered in the register as the secured party fails to apply for the cancellation of the registration within 10 working days of the date on which that person became aware that the security
10 interest had been extinguished, the purchaser or the hirer or the lessee of the motor vehicle, as the case may be, may apply to the Registrar for the cancellation of the registration.

(3) On receipt of an application under this section, the Registrar shall give to the person entered in the register as the
15 secured party a notice requiring that person to show cause, within 10 working days of the date on which the notice was given, why the registration should not be cancelled.

(4) If any person fails within those 10 working days to show
20 cause to the Registrar's satisfaction why the registration should not be cancelled, the Registrar may cancel the registration of the security interest.

15. Cancellation of registration by Registrar—(1) Where it appears to the Registrar that—

25 (a) A person entered in the register as the holder of a security interest was not, when the application for registration was made, the holder of that security interest; or

(b) A registered security interest may have been discharged or extinguished and the person entered in the register
30 as the secured party may have failed to apply for the cancellation of the registration,—

the Registrar may, by notice to that person, require that person to show cause, within 10 working days of the date on which the notice was given, why the registration should not be cancelled.

(2) If any person fails within those 10 working days to show
35 cause to the Registrar's satisfaction why any registration should not be cancelled, the Registrar may, in the Registrar's discretion, cancel the registration of the security interest.

16. Amendment of register—(1) If there is a change in any
40 of the registered particulars of a security interest (other than by reason of the fact that the security interest is discharged or extinguished), the person registered as the secured party may apply to the Registrar to have the register amended.

(2) On receipt of such an application, the Registrar, if satisfied that the application is in order, shall amend the register in accordance with the application.

(3) The Registrar may, if it appears to the Registrar that any registered particulars of a security interest have been 5
incorrectly entered in the register, correct any such particulars.

17. Applications to be in approved form—Every application under this Part of this Act shall be made in a form approved by the Registrar.

18. Fees—Every person who makes an application under this Part of this Act shall pay to the Registrar, either at the time when the application is made or at such time as the Registrar may, in the Registrar's discretion, decide, such fee as may be prescribed in respect of that application.

19. Registrar to enter date and time of cancellation or amendment—The Registrar shall enter in the register, in respect of each registration that is cancelled or amended under this Part of this Act, the date and time of cancellation or amendment. 15

20. False or misleading statements—Every person 20
commits an offence and shall be liable on summary conviction to a fine not exceeding \$2,000 who, for the purposes of obtaining or retaining the registration of any security interest under this Act, or of obtaining the cancellation of any security interest under this Act, makes a statement or supplies any 25
information knowing that it is false or misleading in a material particular.

21. Exemption from liability—(1) Except as provided in section 47 of this Act, no proceedings shall lie against the Crown, or the Registrar, or any other person engaged in the 30
administration of this Act, arising from anything done or omitted to be done under this Part of this Act, unless it is shown that that person acted in bad faith in doing or omitting to do that thing.

(2) Nothing in subsection (1) of this section applies in respect of 35
any application for review under Part I of the Judicature Amendment Act 1972.

PART II
DISPOSITIONS OF MOTOR VEHICLES SUBJECT TO SECURITY
INTERESTS

Dispositions by persons other than dealers

- 5 **22. Extinguishment of security interest where motor
vehicle purchased from person other than dealer—**
(1) Where a motor vehicle that is subject to a security interest is
purchased from the debtor, and the purchaser does not have
notice of the security interest at the time when the purchase
10 price is paid or the exchange is made,—
 (a) The security interest in the motor vehicle shall be
 extinguished; and
 (b) The purchaser shall acquire the vehicle free from the
 security interest; and
15 (c) Where title to the vehicle was vested in the holder of that
 security interest, title shall pass to the purchaser.
 (2) For the purposes of this section, the term “debtor”
includes any person who is in possession of the vehicle in
circumstances where the debtor has lost the right to possession
20 of the vehicle or is estopped from asserting an interest in the
vehicle against the purchaser.
 (3) Nothing in this section shall apply if the vehicle is
purchased from a dealer.
 (4) **Subsection (1) (c)** of this section applies notwithstanding
25 section 23 (1) of the Sale of Goods Act 1908, but without
prejudice to any other section of that Act or to any other
enactment.

- 23. Rules for determining whether purchaser has
notice of security interest—**For the purposes of **section 22** of
30 this Act, a purchaser of a motor vehicle that is subject to a
security interest has notice of that security interest if—
 (a) The purchaser has actual notice of that security interest;
 or
 (b) The security interest is registered under this Act; or
35 (c) The purchaser has actual notice that the motor vehicle is
 subject to a floating charge that is registered under
 the Companies Act 1955 or the Industrial and
 Provident Societies Act 1908 and has actual notice
 that it has become fixed.

24. Purchases on hire purchase or leases from persons other than dealers—Where—

- (a) Any person acquires, under a hire purchase agreement or a lease, an interest in a motor vehicle that is subject to a security interest; and 5
- (b) The security interest in that motor vehicle would, if that person had purchased the vehicle, have been extinguished pursuant to **section 22** of this Act,—
any secured party shall, notwithstanding any provision of the agreement between the secured party and the debtor, be 10 bound by the terms of the hire purchase agreement or the lease, as the case may be.

25. Rights of secured party in event of hire purchase agreement or lease—Where a secured party is, by virtue of **section 24** of this Act, bound by the terms of any hire purchase 15 agreement or lease, the secured party shall be entitled—

- (a) To demand and give receipts for money payable under the hire purchase agreement or lease; and
- (b) To exercise all other rights and powers of the person who disposed of the vehicle under the hire purchase 20 agreement or lease, as if that person's rights under the hire purchase agreement or lease had been assigned to the secured party.

Dispositions by dealers

26. Extinguishment of security interest where motor 25 vehicle purchased from dealer—(1) Where a motor vehicle that is subject to a security interest is purchased from a dealer,—

- (a) The security interest in that motor vehicle shall be extinguished; and 30
 - (b) The purchaser shall acquire the vehicle free from the security interest; and
 - (c) Where title to the vehicle was vested in the holder of that security interest, title shall pass to the purchaser.
- (2) **Subsection (1)** of this section shall apply whether or not the 35 dealer or the purchaser has notice of the security interest and whether or not the dealer is the debtor, except where—
- (a) The security interest is disclosed to the purchaser in writing before the contract of sale becomes binding on the purchaser; or 40
 - (b) The security interest is created by or with the express consent of the purchaser.

(3) **Subsection (1) (c)** of this section applies notwithstanding section 23 (1) of the Sale of Goods Act 1908, but without prejudice to any other section of that Act or to any other enactment.

- 5 **27. Purchases on hire purchase or leases from dealers**—(1) Where a motor vehicle that is subject to a security interest is purchased from a dealer on hire purchase or is leased from a dealer,—
- 10 (a) The security interest in that motor vehicle shall be extinguished; and
- (b) Where title to the vehicle was vested in the holder of that security interest, title shall pass to the dealer.
- (2) **Subsection (1)** of this section shall apply whether or not the dealer or the hirer or the lessee has notice of the security interest and whether or not the dealer is the debtor, except where—
- 15 (a) The security interest is disclosed to the hirer or lessee in writing before the hire purchase agreement or lease is entered into; or
- 20 (b) The security interest is created by or with the express consent of the hirer or the lessee.
- (3) **Subsection (1) (b)** of this section applies notwithstanding section 23 (1) of the Sale of Goods Act 1908, but without prejudice to any other section of that Act or to any other enactment.
- 25

Reimbursement of secured party in event of disposition by dealer with notice of security interest

- 28. Rules for determining whether dealer has notice of security interest**—For the purposes of section 29 or section 33 of this Act, a dealer has notice of a security interest if—
- 30 (a) The dealer has actual notice of the security interest; or
- (b) The security interest is registered under this Act; or
- (c) The dealer has actual notice that the motor vehicle is subject to a floating charge that is registered under the Companies Act 1955 or the Industrial and Provident Societies Act 1908 and has actual notice that it has become fixed.
- 35

- 29. Reimbursement of secured party by dealer with notice of security interest**—Where—
- 40 (a) A motor vehicle is purchased from a dealer; and
- (b) The motor vehicle is subject to a security interest immediately before the time of purchase; and

- (c) The dealer has notice of that security interest at the time when the purchase price is paid or the exchange is made; and
- (d) The security interest in that motor vehicle is extinguished by virtue of **section 26** of this Act,— 5
- the dealer shall pay to the secured party, within 28 days of the date on which the secured party serves a claim for payment on the dealer, the amount outstanding in respect of the debt or other obligation secured by the security interest.

30. Reimbursement of secured party by Motor Vehicle Dealers Fidelity Guarantee Fund—(1) Where any dealer fails to comply with **section 29** of this Act, the secured party may make a claim under Part III of the Motor Vehicle Dealers Act 1975 for payment by the Motor Vehicle Dealers Fidelity Guarantee Fund of the amount that the dealer is required by that section to pay to the secured party. 10 15

(2) The Motor Vehicle Dealers Fidelity Guarantee Fund shall not be liable to pay to the secured party any amount that is recoverable from the purchaser of the motor vehicle under **section 37** of this Act. 20

31. Procedure for making claims for reimbursement—
Every claim for payment made by a secured party pursuant to **section 29** or **section 30** of this Act shall be accompanied by—

- (a) In the case of a registered security interest, a certificate issued by the Registrar under **section 10** of this Act containing the registered particulars of the security interest held by the secured party immediately before the time of purchase; and 25
- (b) In the case of an unregistered security interest, a statement setting out the grounds on which it is believed that the dealer had notice of the security interest; and 30
- (c) A statutory declaration by the secured party, or, where the secured party is a company, by any director or other officer authorised in writing for the purpose, 35 declaring—
- (i) The amount of the debt or other pecuniary obligation secured by the security interest; and
 - (ii) The amount received by the secured party in satisfaction of that debt or other obligation; and 40
 - (iii) The amount outstanding in respect of that debt or other obligation at the date when the declaration is made; and

(iv) The amount recoverable from the purchaser of the vehicle under **section 37** of this Act, if applicable.

32. Subrogation of rights of action against debtor and dealer—(1) Where payment is made to the secured party by the dealer pursuant to **section 29** of this Act, or by the Motor Vehicle Dealers Fidelity Guarantee Fund pursuant to **section 30** of this Act, the dealer or the Fund, as the case may be, shall be subrogated, to the extent of that payment, to all rights and remedies that, but for the subrogation, the secured party would have had against the debtor, or in the event of the death or insolvency of the debtor, against the debtor's personal representatives or other persons having authority to administer the debtor's estate, and to all other rights and remedies of the secured party in respect of any act or thing done or omitted to be done in the course of the sale or other disposal of the motor vehicle.

(2) Where payment is made to the secured party by the Motor Vehicle Dealers Fidelity Guarantee Fund pursuant to **section 30** of this Act, the Fund shall be subrogated, to the extent of that payment, to all rights and remedies that, but for the subrogation, the secured party would have had against the dealer, or, in the event of the death or insolvency of the dealer, against the dealer's personal representatives or other persons having authority to administer the dealer's estate.

(3) Notwithstanding anything to the contrary in the Companies Act 1955 or in any other Act or rule of law, if a claim made pursuant to **section 29** or **section 30** of this Act arises wholly or partly by reason of any act or omission of an officer, employee, or agent of the debtor or the dealer, a District Court Judge may, if the District Court Judge thinks fit, on the application of the dealer or the Fund, as the case may be, declare that any person who was knowingly a party to the act or omission shall be personally responsible, without any limitation of liability, for the repayment to the dealer or the Fund, as the case may be, of the whole or any part of the amount paid by the dealer or the Fund pursuant to this section.

(4) Notwithstanding anything in the Companies Act 1955 or any other Act or in any rule of law, any amount that the Fund is entitled to recover from a dealer company, shall, in the event of the winding up of the company, be paid in priority to all other debts in accordance with section 308(1)(d) of the Companies Act 1955, and the provisions of that section and of section 101 of that Act shall apply to it accordingly.

33. Reimbursement of secured party in event of dealer with notice of security interest making hire purchase agreement or granting lease—(1) Where—

- (a) A motor vehicle is purchased on hire purchase from a dealer or leased from a dealer; and 5
- (b) The motor vehicle is subject to a security interest immediately before the hire purchase agreement or lease is entered into; and
- (c) The dealer has notice of that security interest at the time when the first payment under the hire purchase agreement or lease is made; and 10
- (d) The security interest is extinguished by virtue of **section 27** of this Act,—

the dealer shall pay to the secured party, within 28 days after the date on which the secured party serves a claim for payment on the dealer, the amount outstanding in respect of the debt or other obligation secured by the security interest. 15

(2) The provisions of **sections 29 to 32** of this Act shall apply, with such modifications as may be necessary, to a claim made by a secured party under **subsection (1)** of this section. 20

Miscellaneous provisions

34. Part to apply notwithstanding registration of charge under Companies Act 1955, etc.—The provisions of this Part of this Act shall apply, and a security interest in a motor vehicle may be extinguished, notwithstanding that the charge which creates or evidences the security interest, or the charge under which the security interest otherwise arises, is registered under the Companies Act 1955 or the Industrial and Provident Societies Act 1908. 25

35. Revival of security interest on cancellation of contract for purchase of motor vehicle—(1) Where— 30

- (a) A purchaser contracts to purchase a motor vehicle that is subject to a security interest; and
- (b) The security interest in the motor vehicle is extinguished by virtue of **section 22** or **section 26** of this Act; and 35
- (c) The contract for the purchase of the motor vehicle is cancelled,—

the security interest shall revive and continue in full force and effect as if it had not been extinguished.

(2) Where a security interest revives pursuant to **subsection (1)** of this section, the title to the vehicle shall revert in the person in whom it was vested immediately before the security interest was extinguished. 40

(3) Where a security interest revives pursuant to **subsection (1)** of this section after the registration of the security interest has been cancelled, the Registrar shall, on application by the secured party, re-register the security interest, without payment
5 of any fee, as if it had not been cancelled.

(4) Nothing in this section shall apply if the secured party has already been paid the amount outstanding in respect of the debt or other obligation secured by the security interest.

36. Revival of security interest on cancellation of hire purchase agreement or lease entered into with dealer—

(1) Where—

(a) A hirer enters a hire purchase agreement with a dealer in respect of a motor vehicle that is subject to a security interest or a lessee enters into a lease with a dealer in
15 respect of a motor vehicle that is subject to a security interest; and

(b) The security interest in the motor vehicle is extinguished by virtue of **section 27** of this Act; and

(c) The hire purchase agreement or the lease, as the case may
20 be, is cancelled,—

the security interest shall revive and continue in full force and effect as if it had not been extinguished.

(2) Where a security interest revives pursuant to **subsection (1)** of this section, the title to the vehicle shall revert in the person
25 in whom it was vested immediately before the security interest was extinguished.

(3) Where a security interest revives pursuant to **subsection (1)** of this section after the registration of the security interest has been cancelled, the Registrar shall, on application by the
30 secured party, re-register the security interest, without payment of any fee, as if it had not been cancelled.

(4) Nothing in this section shall apply if the secured party has already been paid the amount outstanding in respect of the debt or other obligation secured by the security interest.

37. Secured party subrogated to rights of seller against purchaser—(1) Where—

(a) A purchaser acquires, by virtue of **section 22** or **section 26** of this Act, a motor vehicle free from any security interest to which it was subject; and

(b) The purchaser pays or delivers part only of the purchase price at the time when the motor vehicle is
40 acquired,—

the secured party shall be subrogated, to the extent of the amount outstanding in respect of the debt or other obligation secured by the security interest, to all rights and remedies that, but for the subrogation, the person from whom the vehicle was purchased would have had against the purchaser in respect of the payment or the delivery by the purchaser of the balance of the purchase price. 5

(2) Where a secured party is, by virtue of **subsection (1)** of this section, subrogated to the rights and remedies of any person in respect of the balance of the purchase price, the receipt of the secured party shall be a complete discharge to the purchaser for any money paid or any property delivered to the secured party in reduction of the balance of that purchase price. 10

(3) A purchaser shall not be liable to the secured party for any money paid or any property delivered to any person in reduction of the balance of the purchase price for a motor vehicle at any time before the purchaser is notified in writing by the secured party that the purchaser is obliged by reason of this section to pay that money or to deliver that property to the secured party. 15 20

38. Liability of agent—(1) A person acting as an auctioneer or other agent of the debtor is not liable for conversion, or any other tort in respect of interests in chattels, by selling or otherwise disposing of a motor vehicle subject to a security interest, if the person did not have notice of the security interest at the time when the person sold or disposed of the vehicle. 25

(2) For the purposes of determining, pursuant to **subsection (1)** of this section, whether any person had notice of a security interest, the provisions of **section 28** of this Act shall apply to that person as if that person were a dealer. 30

PART III

PRIORITY OF SECURITY INTERESTS

39. Priority of company or society charges preserved— The priority of any charge created by a company registered under the Companies Act 1955 or by a society registered under the Industrial and Provident Societies Act 1908 in relation to any other charges created by that company or society shall be determined as if this Part of this Act had not been enacted. 35

40. Registered security interests to have priority over unregistered security interests—A registered security interest in respect of a motor vehicle shall have priority over 40

any unregistered security interest in respect of the same vehicle.

41. Priority of registered security interests according to time of registration—Any 2 or more security interests registered in respect of the same motor vehicle shall have priority in relation to each other according to the time of registration, and not according to the time at which the security interest was created or otherwise arose.

42. Notice of earlier security interest and possession of vehicle—Sections 40 and 41 of this Act shall apply notwithstanding that, at the time when any security interest is registered,—

- (a) The holder of that security interest had express, implied, or constructive notice of any earlier security interest;
- (b) The motor vehicle was in the possession of any other secured party.

43. Priority of unregistered security interests—Any 2 or more unregistered security interests in respect of the same vehicle shall have priority in relation to each other according to the time at which each security interest was created or otherwise arose.

44. Security for further advances—(1) The terms and conditions of any security interest in respect of a motor vehicle may include a reference to any maximum amount up to which the sum for the time being owing under the security interest shall have priority over any subsequent security interest in respect of the same vehicle.

(2) A registered security interest shall, in respect of money advanced in excess of the maximum amount, have priority over any other security interest in respect of the same vehicle as if the first-mentioned security interest had been registered only at the time at which the registered particulars were amended to take account of the variation of the maximum amount.

(3) An unregistered security interest shall, in respect of any money advanced in excess of the maximum amount, have priority over any subsequent security interest in respect of the same vehicle as if the first-mentioned security interest had been created or had arisen only at the time at which the terms and

conditions were amended to take account of the variation of the maximum amount.

(4) Except as provided in this section, section 80A of the Property Law Act 1952 shall apply to a security interest as if it were a mortgage. 5

(5) Any holder of a security interest in a motor vehicle may request the Registrar to disclose the information entered in the register relating to the amount of the debt or the details of any other obligation secured by any other security interest registered in respect of the same vehicle. 10

(6) Where any request is made under subsection (5) of this section, the Registrar shall, if satisfied that the information is needed to determine the priorities of any 2 or more security interests in respect of a vehicle, supply the information requested. 15

45. Postponement of priority—(1) A holder of a registered security interest in a motor vehicle may apply to the Registrar for the postponement of the priority of that security interest to any other registered security interest. 20

(2) Every application for postponement shall be made in a form approved by the Registrar, and accompanied by payment of the prescribed fee. 20

(3) The Registrar shall note on the register that the security interest has been so postponed.

46. Provisions of this Part subject to certain provisions of Part II—The provisions of this Part of this Act shall apply subject to the provisions of section 24 and section 27 of this Act. 25

PART IV

MISCELLANEOUS PROVISIONS

Compensation for loss or damage arising from acts or omissions of Registrar 30

47. Application for compensation—(1) A person who suffers loss or damage by reason of any matter specified in section 48 of this Act shall be entitled to apply to the Tribunal for payment of compensation in respect of that loss or damage. 35

(2) An application for compensation may be in any written form.

(3) On receipt of an application for compensation under this section, the Tribunal shall determine whether or not compensation should be paid to the applicant, and, if it determines that payment should be made, shall make an order for payment to the applicant of such amount as the Tribunal 40

considers appropriate out of money appropriated by Parliament for the purpose.

(4) The provisions of the Small Claims Tribunals Act 1976 set out in the **First Schedule** to this Act shall apply, so far as they are applicable and with the necessary modifications, to every application under this section.

48. Matters in respect of which compensation is payable—The specified matters are—

- 10 (a) That the Registrar has failed to register any security interest in respect of which an application for registration has been made in accordance with **section 6** of this Act:
- 15 (b) That the Registrar has entered in the register any particulars of a security interest that do not correctly reflect the information contained in the application for registration:
- 20 (c) That the Registrar has made any statement in response to an enquiry made under **section 9** of this Act that does not correctly represent the state of the register in relation to any specified vehicle:
- 25 (d) That the Registrar has issued any certificate pursuant to **section 10** of this Act that contains—
 - (i) An incorrect statement to the effect that no security interest is registered in respect of a specified motor vehicle; or
 - (ii) Particulars of any security interest, or particulars of any entry made under **section 8** of this Act, that do not correctly represent the state of the register in relation to a specified vehicle:
- 30 (e) That the Registrar has failed to cancel the registration of any security interest in respect of which an application for cancellation has been made in accordance with **section 12** of this Act:
- 35 (f) That the Registrar has cancelled or amended the registration of any security interest which should not have been cancelled or amended:
- (g) That the Registrar had failed to amend the register in accordance with any application made under **section 16** of this Act.

40 **49. Maximum compensation payable**—(1) The amount of any compensation paid to a secured party pursuant to this section shall not exceed—

- (a) The amount of the debt or other pecuniary obligation or the value of any other obligation that was secured by the security interest and that is still owing to the secured party at the time when the payment of compensation is made; or 5
 - (b) The value of the motor vehicle, calculated at the date on which the loss or damage was suffered,—
- whichever is the lesser.

(2) The amount of any compensation paid to a person other than a secured party pursuant to this section shall not exceed 10 the value of the motor vehicle, calculated at the date on which the loss or damage was suffered.

50. Factors that may prevent or reduce compensation payments—(1) Where any loss or damage is occasioned wholly or partly by any act or omission of any person other than the Registrar, the compensation that would otherwise be payable to the applicant may be reduced by such amount as the Tribunal considers appropriate. 15

(2) Where—

- (a) Any person applies to the Tribunal for payment of compensation in respect of any loss or damage suffered by reason of any cancellation of the registration of a security interest; and 20
- (b) The Registrar, before cancelling the registration, gave to the person entered in the register as the holder of the security interest, a notice requiring that person to show cause why the registration should not be cancelled; and 25
- (c) That person failed, within 10 working days of the date on which the notice was given, to show cause to the Registrar's satisfaction why the registration should not be cancelled,— 30

the Tribunal shall not make an order for payment of compensation to the applicant unless the Tribunal is satisfied that cause was not shown to the Registrar's satisfaction why the registration should not be cancelled because of circumstances beyond the applicant's control or for reasons that ought reasonably to be excused. 35

(3) Where any person applies to the Tribunal for payment of compensation and that person has— 40

- (a) Any right of reimbursement from a dealer or the Motor Vehicle Dealers Fidelity Guarantee Fund; or

- (b) Any right of subrogation to the rights of any seller of a motor vehicle against the purchaser in respect of the balance of the purchase price,—
the Tribunal shall not make an order for payment of
5 compensation to the applicant unless the Tribunal is satisfied that the applicant has exercised that right or those rights or that it would not be reasonable to require the applicant to exercise that right or those rights.

General provisions

- 10 **51. Fraudulent sale or disposal of motor vehicle**—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who, with intent to defraud a secured party, parts with possession of, or purports to sell, any motor vehicle that is subject to a security interest.

- 15 **52. Prohibition on contracting-out**—(1) If any agreement contains a term which would modify, restrict, or exclude any provision of this Act, that term shall be of no effect.

- (2) Every person commits an offence and shall be liable on summary conviction to a fine not exceeding \$1,000 who enters
20 into an agreement that contains any term which is, by reason of subsection (1) of this section, of no effect.

- (3) Section 56 of the Sale of Goods Act 1908 shall be read subject to the provisions of this section.

- 25 **53. Certain provisions of Chattels Transfer Act 1924 to apply**—The provisions of sections 46 to 54 of the Chattels Transfer Act 1924 shall apply in all respects and with such modifications as may be necessary to any motor vehicle as if it were a chattel, and to every agreement by or under which a security interest in respect of a motor vehicle is created,
30 evidenced, or otherwise arises as if it were an instrument by way of security, within the meaning of that Act.

- 54. Savings of rights and remedies**—Except to the extent that this Act expressly provides otherwise, nothing in this Act shall modify, restrict, or exclude any right or remedy that a
35 person would have had if this Act had not been enacted.

- 55. Power of Registrar to delegate**—(1) The Registrar may from time to time, in writing, delegate to any person all or any of the functions, duties, and powers exercisable by the Registrar under this Act, except this power of delegation.

(2) Subject to any general or special directions given or conditions attached by the Registrar, any person to whom any functions, duties, or powers are delegated under this section shall perform and may exercise those functions, duties, and powers in the same manner and with the same effect as if they had been conferred on that person directly by this section and not by delegation. 5

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary. 10

(4) Any delegation under this section may be made to a specified employee or to employees of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices. 15

(5) Every delegation under this section shall be revocable in writing at will, and no such delegation shall prevent the exercise of any function, duty, or power by the Registrar.

(6) Every delegation under this section shall, until revoked, continue in force according to its tenor notwithstanding that the Registrar by whom it was made has ceased to hold office. 20

56. Service of notices—(1) Any notice or any other document required or authorised by this Act to be served on or given to any person shall be in writing and shall be sufficiently served or given if it is delivered to that person or if it is left at that person's usual or last known place of abode or business or at an address specified for that purpose in any document creating a security interest, or if it is posted in a letter addressed to that person by name at that place of abode or business or address. 25 30

(2) If the person is absent from New Zealand, the notice or other document may be served on or given to that person's agent in New Zealand. If the person is deceased, it may be served on or given to that person's personal representatives.

(3) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or other document shall be served or given in such manner as may be directed by an order of a District Court. 35

(4) If any such notice or other document is sent to any person by registered letter it shall be deemed to have been delivered to that person on the 4th day after the day on which it was posted, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted. 40

(5) Notwithstanding anything in the foregoing provisions of this section, a District Court may in any case make an order directing the manner in which any notice or other document is to be served or given, or dispensing with the service or giving
5 thereof.

(6) This section does not apply to notices or other documents served or given in any proceedings in any Court.

57. Offence by officer of company—Where an offence against this Act has been committed by a company and it is
10 proved to have been committed with the consent or connivance of a person who, within the meaning of the Companies Act 1955, is a director, manager, secretary, or other officer of the company, that person shall be guilty of the same offence and shall be liable to the same penalty as the company.

58. Regulations—(1) The Governor-General may, by Order in Council, make regulations for all or any of the following
15 purposes:

- (a) Approving any form to be used for any matter under this Act:
- 20 (b) Prescribing matters in respect of which fees are payable under this Act and the amount of those fees:
- (c) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(2) Regulations made under **subsection (1)** of this section
25 may—

- (a) Approve different forms to be used upon an application for registration of a security interest; and
- (b) Prescribe different registration fees,—
- 30 according to whether or not the motor vehicle to which the security interest relates is registered under Part I of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

59. Enactments amended—The enactments specified in
35 the **Second Schedule** to this Act are hereby consequentially amended in the manner indicated in that Schedule.

PART V

TRANSITIONAL PROVISIONS

60. Meaning of terms used in this Part—In this Part of
40 this Act, unless the context otherwise requires,—

“The commencement date” means the 1st day of October 1989:

“The transitional period” means the period of 6 months beginning with the 1st day of October 1989 and ending on the 31st day of March 1990.

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61. Existing security holders may apply for registration—(1) Every person who, at the commencement date, is the holder of a security interest in respect of a motor vehicle may, before the end of the transitional period, apply to the Registrar for the registration of that security interest under this Act. 10

(2) Every person who, at any time during the transitional period, becomes the holder of a security interest in respect of a motor vehicle, may, before the end of the transitional period, apply to the Registrar for the registration of that security interest under this Act. 15

62. Priority of security interests registered in transitional period—Subject to sections 63 and 64 of this Act, every security interest in relation to which an application for registration is received by the Registrar at any time during the transitional period shall, notwithstanding section 41 of this Act, have priority according to the time at which the security interest was created or otherwise arose. 20

63. Saving of priority from previous registration—(1) Where any 2 or more security interests in a motor vehicle are created, evidenced, or otherwise arise by or under any 2 or more instruments that are immediately before the end of the transitional period registered under the Chattels Transfer Act 1924 and, before the end of the transitional period, those security interests are registered under this Act, those security interests shall, notwithstanding section 41 of this Act, have the same priority as the priority that the instruments by or under which the security interests were created, evidenced, or otherwise arose had when registered under the Chattels Transfer Act 1924. 25 30 35

(2) Where any 2 or more security interests in a motor vehicle are created, evidenced, or otherwise arise by or under 2 or more charges created by a company or society (other than a floating charge on the undertaking or property of the company or society) that are immediately before the end of the transitional period registered under the Companies Act 1955 or the Industrial and Provident Societies Act 1908 and, before the 40

end of the transitional period, those security interests are registered under this Act, those security interests shall, notwithstanding **section 41** of this Act, have the same priority as the priority that the charges by or under which the security interests were created, evidenced, or otherwise arose had when registered under the Companies Act 1955 or the Industrial and Provident Societies Act 1908, as the case may be.

(3) The secured party shall supply to the Registrar such evidence as may be required by the Registrar as to the registration of any security interest under any other Act and as to the priority enjoyed by that security interest at any earlier time.

64. Security interests void for non-registration under other Act—(1) Where any instrument comprising or affecting a motor vehicle that was registrable under the Chattels Transfer Act 1924 was not registered under that Act within the time permitted for registration, any person may, if it is an instrument that creates or evidences a security interest within the meaning of this Act, or an instrument under which a security instrument within the meaning of this Act otherwise arises, apply for the registration under this Act of that security interest.

(2) Where any charge on a motor vehicle that was registrable under the Companies Act 1955 or the Industrial and Provident Societies Act 1908 was not registered under that Act within the time permitted for registration, any person may, if it is a charge that creates or evidences a security interest within the meaning of this Act, or a charge under which a security interest within the meaning of this Act otherwise arises, apply for the registration under this Act of that security interest.

(3) Where the Registrar receives any application for registration pursuant to **subsection (1)** or **subsection (2)** of this section, the Registrar shall, if the Registrar is satisfied that the application is in order and notwithstanding **section 41** of this Act, register the security interest as if the security interest had only been created or had only otherwise arisen on the date on which the application for registration was received by the Registrar.

65. Registration under Chattels Transfer Act 1924 to cease—The registration of any instrument under the Chattels Transfer Act 1924, so far as it comprises or affects any motor vehicle, shall, as from the end of the transitional period, cease to be of any effect.

SCHEDULES

Sections 13 (3), 47 (4)**FIRST SCHEDULE**

PROVISIONS OF SMALL CLAIMS TRIBUNALS ACT 1976 WHICH APPLY TO
APPLICATIONS MADE UNDER THIS ACT

Sections 1, 2 (excluding the definitions of the terms "motor vehicle" and "work order"), 3 to 8, 9 (2) and (4), 14, 15, 17, 18, 19 (1) to (3), 20, 21, 22 (1) and (2), 24 to 30, 31 (1) and (6), 33 to 45, and the Schedule.

Section 59**SECOND SCHEDULE****ENACTMENTS AMENDED**

Enactment	Amendment
1908, No. 117—The Mercantile Law Act 1908 (R.S. Vol. 10, p. 91)	By inserting in section 3, after subsection (1), the following subsection: “(1A) Where the goods are a motor vehicle and a security interest in respect of that vehicle has been registered under the Motor Vehicle Securities Act 1988, the person taking under any disposition of the vehicle shall be deemed to have notice that the person making the disposition has no authority to make it, unless it is proved that such authority did exist.”
1908, No. 168—The Sale of Goods Act 1908 (R.S. Vol. 11, p. 281)	By adding to section 23 (2) the following paragraph: “(c) The provisions of the Motor Vehicle Securities Act 1988 enabling a purchaser of a motor vehicle to acquire good title to the vehicle.” By adding to section 27 (2) the following proviso: “Provided further that, in the case of a motor vehicle, if the lien or other right of the original seller is created or evidenced by, or arises under, a security interest registered under the Motor Vehicle Securities Act 1988, then the person receiving the motor vehicle shall be deemed to have notice of the existence of that security interest and the registered particulars in respect of it.”
1924, No. 49—The Chattels Transfer Act 1924 (R.S. Vol. 15, p. 33)	By adding to the definition of "chattels" in section 2 the following paragraph: “(e) Motor vehicles within the meaning of the Motor Vehicle Securities Act 1988.” By omitting from the Seventh Schedule the words "Motor vehicles of all descriptions.”

SECOND SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1952, No. 45—The Industrial and Provident Societies Amendment Act 1952 (R.S. Vol. 7, p. 445)	By inserting in section 17 (2), after paragraph (c), the following paragraph: “(cc) A charge on any motor vehicle of the society:”.
1955, No. 63—The Companies Act 1955 (R.S. Vol. 15, p. 89)	By inserting in section 102 (2), after paragraph (c), the following paragraph: “(cc) A charge on any motor vehicle of the company:”.
1975, No. 127—The Motor Vehicle Dealers Act 1975 (R.S. Vol. 5, p. 749)	<p>By repealing paragraph (c) of section 30 (3), and substituting the following paragraph: “(c) All money recovered by or on behalf of the Institute or the Fund in the exercise of any right of action conferred by this Part of this Act or by the Motor Vehicle Securities Act 1988:”.</p> <p>By adding to section 31 (1) the following paragraph: “(f) The amount of all claims, including costs, allowed or established against the Fund in accordance with the Motor Vehicle Securities Act 1988.”</p> <p>By inserting in section 39, after the words “suffered loss”, the words “or is entitled to payment”.</p> <p>By adding to section 39 the following paragraph: “(g) A claim under section 30 of the Motor Vehicle Securities Act 1988.”</p> <p>By adding to section 40 (2) (b) the following subparagraph: “(iv) In respect of a claim under paragraph (g) of that section, within 3 months after the date on which the dealer failed to comply with section 29 of the Motor Vehicle Securities Act 1988.”</p> <p>By adding to section 40 (3) the following proviso: “Provided further that no person shall be entitled to make a claim against the Fund under paragraph (g) of that section in respect of any amount that is recoverable from the purchaser of a motor vehicle under section 37 of the Motor Vehicle Securities Act 1988.”</p>

SECOND SCHEDULE—*continued*
 ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1975, No. 127—The Motor Vehicle Dealers Act 1975 (R.S. Vol. 5, p. 749)— <i>continued</i>	By inserting in section 40 (4A) (as substituted by section 9 (1) of the Motor Vehicle Dealers Amendment Act 1979), before the expression “section 39”, the expression “paragraphs (a) to (f) of”. By repealing paragraph (b) of section 89 (1).