



The Senate  
EIGHTH OLBIL ERA KELULAU

P.O. Box 8, Ngerulmud  
Republic of Palau 96939

FOURTEENTH REGULAR Session

April 2012

INTRODUCED AS SENATE BILL NO. 8-164, SD1, HD1

**AN ACT**

The Secured Transactions Act

INTRODUCED BY SENATOR (S) Surangel Whipps, Jr., and Kathy Kesolei

ET/AL/

DATE INTRODUCED November 4, 2010

**SENATE ACTION**

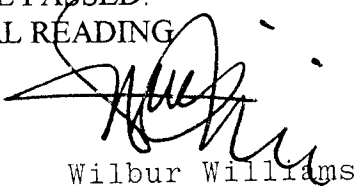
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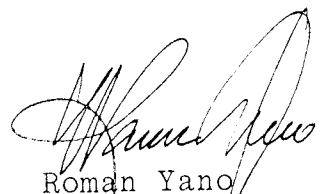
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 Wilbur Williams

CLERK OF THE SENATE

  
 Roman Yano

HOUSE CLERK

AN ACT

An Act to facilitate business and consumer transactions by providing uniform rules on attachment, priority, publicity, and enforcement of security interests in personal property collateral, and other related matters.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIL ERA KELULAU DO ENACT AS FOLLOWS:

THE SECURED TRANSACTIONS ACT

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9 Chapter 1 – General Provisions

10 Section 2. Short title.

11 This Act shall be known as and may be cited as the “Secured Transactions Act of  
12 2011”, or simply: the “Secured Transactions Act.”

13 Section 3. Purpose and construction.

14 (1) The purpose of this Act is to promote commerce by facilitating business and  
15 consumer credit with respect to the attachment, perfection, and enforcement of security  
16 interests in personal property, and related transactions.

17 (2) If there is a conflict between a provision of this Act and any other law or rule,  
18 this Act shall govern unless the other law or rule specifically states that the other law  
19 governs or expressly amends the conflicting provision of this Act.

20 Section 4. Definitions.

21 In this Act, unless the context otherwise requires:

22 (1) “Accession” means goods that are physically united with other goods in a  
23 manner such that the identity of the goods is not lost.

24 (2) “Account” means:

25 (a) A right to payment of a monetary obligation, whether or not earned by  
26 performance—

27 (i) for property that has been or is to be sold, leased, licensed,  
28 assigned, or otherwise disposed of;

- 1 (ii) for services rendered or to be rendered;  
2 (iii) for a policy of insurance issued or to be issued; or  
3 (iv) for a secondary obligation incurred or to be incurred.

4 (b) However, the term "account" shall not include:

- 5 (i) rights to payment evidenced by chattel paper or an instrument;  
6 (ii) cash and deposit accounts; or  
7 (iii) letters of credit or rights to payment or performance under a  
8 letter of credit.

9 (3) "Account debtor" means the person that is obligated on an account, chattel  
10 paper, or other intangible property.

11 (4) "As-extracted collateral" means—

- 12 (a) oil, gas, or other minerals that are subject to a security interest that:  
13 (i) is created by a debtor having an interest in the minerals before  
14 extraction; and  
15 (ii) attaches to the minerals as extracted; or  
16 (b) accounts arising out of the sale at the wellhead or minehead of oil, gas, or  
17 other minerals in which the debtor had an interest before extraction.

18 (5) "Buyer in the ordinary course of business" means a person that buys goods in  
19 good faith, without actual knowledge that the sale violates the rights of another person in  
20 the goods, in the ordinary course of business from a person other than a pawnbroker in the  
21 business of selling goods of that kind. A person buys goods in the ordinary course of  
22 business if the sale to the person comports with the usual or customary practices in the  
23 kind of business in which the seller is engaged or with the seller's own usual or customary  
24 practices.

25 (6) "Cash proceeds" means proceeds that are money, checks, deposit accounts, and  
26 the like.

27 (7) "Chattel paper" means a record that creates or evidences a debt and a security  
28 interest in, or a lease of, specific goods.

1 (8) "Commingled goods" means goods that are physically united with other goods in  
2 such a manner that their identity is lost in a product or mass.

3 (9) "Commission" means the Financial Institutions Commission.

4 (10) "Consignment" means a transaction, regardless of the form or terminology  
5 used in the agreement, in which a person (the consignor) delivers goods for the purpose of  
6 sale to a merchant (the consignee) that deals in goods of that kind under a name other than  
7 that of the consignor and that is not an auctioneer, but the term excludes transactions  
8 involving goods that are consumer goods of the deliverer.

9 (11) "Consumer goods" means goods used or bought for use primarily for personal,  
10 family, or household purposes. However, the term shall not include a motor vehicle.

11 (12) "Debtor" means the person that has rights in collateral, and includes the seller  
12 of accounts or chattel paper, and the lessee or consignee of goods that are collateral.

13 (13) "Default" means the failure to pay or otherwise perform the obligation secured  
14 when due, or the occurrence of any event or set of circumstances on which, pursuant to the  
15 terms of the security agreement, the security interest becomes enforceable.

16 (14) "Deposit account" means a demand, time, savings, passbook, or similar  
17 account maintained with a bank.

18 (15) "Document" means a document of title, or a receipt such as a bill of lading or  
19 warehouse receipt, issued by a person in the business of transporting or storing goods.

20 (16) "Equipment" means goods that are not inventory, consumer goods, farm  
21 products, timber to be cut or minerals before extraction.

22 (17) "Entity" means a body with capacity to contract other than a natural person or  
23 a foreign entity.

24 (18) "Farm products" means goods produced or to be produced by a debtor  
25 engaged in farming, other than timber, that are—

26 (a) crops grown, growing, or to be grown;

27 (b) aquatic goods produced or to be produced in aquacultural operations;

28 (c) livestock, including the unborn;

1 (d) supplies used or produced, or to be used or produced, in a farming  
2 operation; or

3 (e) products of crops or livestock in their un-manufactured state.

4 (19) "Filing office" means the office established in Chapter 5 of this Act.

5 (20) "Fixture" means goods that are fixed or are intended to become fixed to real  
6 property in a manner that causes a property right to arise in the goods under real property  
7 law or the law on mortgage, but does not include building materials and readily removable  
8 factory machines, office machines and domestic appliances.

9 (21) "Foreign entity" means a body with capacity to contract, organized or  
10 authorized under law other than the law of Palau.

11 (22) "Goods" means personal property that are equipment, inventory, farm  
12 products, consumer goods, fixtures, timber to be cut, and minerals subject to a security  
13 interest in as-extracted collateral. The term shall not include accounts or chattel paper,  
14 money, documents, or instruments.

15 (23) "Guarantee" means a secondary obligation that consists of an obligation to pay,  
16 or an issuer's obligation to pay under a letter of credit, and that supports the payment on  
17 an account, chattel paper, document, instrument, or other intangible property.

18 (24) "Initial notice" means the notice to which an amendment, continuation  
19 statement, or termination statement may relate.

20 (25) "Instrument" means a negotiable instrument, including a writing that  
21 evidences a right to the payment of money that is not itself a security agreement or lease,  
22 but that is a type of which is in the ordinary course of business transferred by delivery with  
23 any necessary endorsement or assignment, and the term includes a share in a company, or  
24 a bond, if the share or bond is evidenced by a writing.

25 (26) "Inventory" means goods other than farm products that are:

26 (a) held or to be held for sale;

27 (b) leased or held for lease; or



1 (c) raw materials, work in process, or materials used or consumed in a  
2 business.

3 (27) "Lease of goods for a period greater than one year" means:

4 (a) a lease of goods for a stated duration of more than one year;

5 (b) a lease of goods for an indefinite term;

6 (c) a lease of goods for an initial term of one year or less if the lessee, with the  
7 consent of the lessor, retains uninterrupted or substantially uninterrupted  
8 possession of the leased goods for more than one year after the lessee first acquired  
9 possession of the goods, but the lease does not become a lease for a term of more  
10 than one year until the lessee's possession extends beyond one year; or

11 (d) a lease of goods for a term of one year or less where the lease provides  
12 that it is renewable for any period that would cause the actual term of the lease to  
13 exceed one year.

14 (28) "Lessee of goods in the ordinary course of business" means a person that, in  
15 good faith and without actual knowledge that the lease is in violation of the ownership  
16 rights or security interest or leasehold interest of a third party in the goods, leases in the  
17 ordinary course from a person in the business of leasing goods of that kind.

18 (29) "Lien holder" means:

19 (a) a person that obtains a judgment that acknowledges or creates a debt in  
20 that person's favor;

21 (b) a liquidator or receiver appointed or approved by a court; or

22 (c) any other person that obtains a right in collateral by operation of law  
23 other than a person that holds a right of retention as provided in this Act.

24 (30) "Motor vehicle" means an automobile or truck that has been issued a serial  
25 number, when held by the debtor as equipment, but not as inventory.

26 (31) "Notice" means a record filed or presented for filing in the filing office.

27 (32) "Other intangible property" means any personal property other than goods,  
28 accounts, chattel paper, documents, instruments, and money.

1 (33) "Proceeds" means—

2 (a) whatever is acquired upon the sale, lease, license, exchange, or other  
3 disposition of collateral;

4 (b) whatever is collected on, or distributed with respect to, collateral;

5 (c) rights arising out of collateral;

6 (d) to the extent of the value of collateral, claims arising out of the loss or  
7 nonconformity of, defects in, or damage to the collateral; and

8 (e) to the extent of the value of collateral and to the extent payable to the  
9 debtor or the secured party, insurance payable by reason of the loss or  
10 nonconformity of, defects in, or damage to the collateral.

11 (34) "Purchase" means to take collateral as a buyer, a donee, a person receiving  
12 security such as a secured party, consignor, lessor, or mortgagee, or by any other voluntary  
13 transaction creating an interest in property.

14 (35) "Purchase-money security interest" means a security interest that is—

15 (a) taken or retained by the seller of goods to secure all or part of its  
16 purchase price; or

17 (b) taken by a person other than the seller that gives value to enable the  
18 debtor to acquire rights in or the use of goods, if such value is in fact so used.

19 (36) "Purchaser" means a person that takes collateral by purchase.

20 (37) "Record" means information that is inscribed on a tangible medium or that is  
21 stored in an electronic or other medium and is retrievable in perceivable form. The term  
22 includes a photocopy, facsimile copy, and electronic mail.

23 (38) "Secured party" means a lender, seller or other person in whose favor a  
24 security interest is created or provided for under a security agreement, including a person  
25 to whom accounts or chattel paper have been sold, and a consignor or lessor of goods,  
26 including the representative of any such person or groups of persons.

27 (39) "Security agreement" means an agreement that creates or provides for a  
28 security interest.

1 (40) "Security interest" means a property right in collateral that secures  
2 performance of an obligation.

3 (41) "Serial number" means the 17-character vehicle identification number assigned  
4 by the manufacturer in accordance with standards promulgated by the International  
5 Organization for Standardization.

6 (42) "Sign" means—

7 (a) to physically execute a signature; or

8 (b) to execute or otherwise adopt a symbol, or encrypt or similarly process a  
9 record in whole or in part, with the present intent to identify the person and adopt  
10 or accept a record.

11 (43) "Unless otherwise agreed" means unless the secured party and the debtor agree  
12 otherwise.

13 (44) "Value" means the rights a person acquires—

14 (a) in return for a binding commitment to give credit, whether or not drawn  
15 upon;

16 (b) as security for or satisfaction of a pre-existing claim, in whole or in part;

17 (c) by accepting delivery pursuant to a pre-existing contract for purchase;

18 (d) in return for anything given in exchange; or

19 (e) any promise.

20 Section 5. Scope.

21 (1) This Act shall apply to—

22 (a) all transactions where the effect is to secure an obligation with collateral,  
23 including pledge, retention of title, chattel mortgage, assignment, and the like;

24 (b) the sale of accounts and chattel paper;

25 (c) consignments;

26 (d) the lease of goods for a period greater than one year; and

1 (e) the interest of a lien holder in collateral.

2 (2) This Act shall apply without regard to the form of an agreement or the  
3 terminology used in an agreement, and whether ownership of the collateral is held by the  
4 secured party or the debtor. The retention of title by a seller of goods has no effect other  
5 than the taking of a security interest in the goods.

6 Section 6. Exclusions.

7 (1) Notwithstanding Section 5, this Act shall not apply to any of the following:

8 (a) The transfer of an interest in real property, except as provided with  
9 respect to fixtures, crops, timber to be cut, or minerals before extraction.

10 (b) The transfer of a claim for compensation of an employee.

11 (c) A sale of accounts or chattel paper as part of a sale of the business out of  
12 which they arose.

13 (d) An assignment of accounts, chattel paper, or instruments for the purpose  
14 of collection only.

15 (e) An assignment of a right to payment under a contract to an assignee that  
16 is also obligated to perform under the contract.

17 (f) The transfer of an interest in a ship in which a mortgage is subject to  
18 registration under another law of Palau.

19 Chapter 2 – Security Interests and Secured Obligations.

20 Section 7. Security interest.

21 (1) Any person may give a security interest in collateral, and any person may take a  
22 security interest in collateral.

23 (2) Notwithstanding subsection (1), no security interest other than a purchase-  
24 money security interest shall be given or taken in consumer goods.

25 (3) A security interest shall not be deemed invalid because the debtor has the right  
26 to use, possess, sell, exchange, commingle, or otherwise dispose of the collateral.

27 (4) A security interest in collateral shall constitute a security interest in any  
28 guarantee or supporting obligation with respect to the collateral.

1           **Section 8. Nature of a purchased-money security interest.**

2           (1) The security interest of a consignor in goods that are the subject of a  
3 consignment shall be deemed a purchase-money security interest in inventory.

4           (2) In a transaction other than a consumer-goods transaction, a purchase-money  
5 security interest shall not lose its status if—

6                   (a) the purchase-money collateral also secures an obligation that is not a  
7 purchase-money obligation;

8                   (b) collateral that is not purchase-money collateral also secures the purchase-  
9 money obligation; or

10                  (c) the purchase-money obligation has been renewed, refinanced,  
11 consolidated, or restructured.

12           **Section 9. Secured obligation.**

13           (1) A security interest may secure one or more obligations.

14           (2) Secured obligations may be described specifically or in general terms.

15           (3) Secured obligations may be monetary or non-monetary obligations.

16           (4) Secured obligations may be governed by foreign law.

17           (5) A security interest may secure future obligations, whether mandatory,  
18 conditional, or optional.

19           (6) A security interest may secure pre-existing obligations.

20           **Section 10. Collateral.**

21           (1) Collateral may be—

22                   (a) personal property of any nature, including tangible and intangible  
23 personal property;

24                   (b) personal property in which the debtor has rights at the time of the  
25 conclusion of the security agreement;

26                   (c) personal property that is described in the security agreement, but in  
27 which the debtor acquires rights at a later time;

28                   (d) personal property that is in or outside of the Republic of Palau;

1 (e) goods sold or leased (no matter what the duration of the agreement)  
2 under an agreement denominated as a lease but which is actually a transaction for  
3 security, or other title-retention scheme;

4 (f) accounts or chattel paper that have been sold;

5 (g) goods that are consigned;

6 (h) proceeds of collateral;

7 (i) fixtures;

8 (j) timber to be cut;

9 (k) as-extracted collateral; and

10 (l) goods leased for a period greater than one year.

11 **Section 11. Collateral description in security agreement or notice.**

12 (1) A description of collateral in a security agreement or notice shall be sufficient if  
13 it—

14 (a) describes collateral by item or kind in a manner that enables the  
15 collateral to be identified;

16 (b) consists of a statement that a security interest is taken in all of the  
17 debtor's present and after-acquired property; or

18 (c) consists of a statement that a security interest is taken in all of the  
19 debtor's present and after-acquired property except for specified items or kinds of  
20 personal property.

21 (2) A notice that covers fixtures, timber to be cut, or as-extracted collateral shall be  
22 effective only if it provides a description of the relevant real property. A description of real  
23 property shall be required only to reasonably describe the real property, and shall not be

1 required to satisfy the requirements of a description necessary to create a mortgage in real  
2 property or to establish ownership rights in real property.

3 Section 12. Effectiveness of security agreement.

4 (1) A security agreement shall be effective according to its terms between the  
5 parties, against purchasers of the collateral, and against creditors and lien holders, except  
6 as otherwise provided in this Act.

7 (2) A security agreement may be found in multiple records when read together.

8 Section 13. Collateral in secured party's possession.

9 (1) A secured party shall exercise reasonable care in the physical custody and  
10 preservation of collateral in the secured party's possession.

11 (2) Unless otherwise agreed, if the collateral is in the secured party's possession—

12 (a) reasonable expenses shall be charged to the debtor and secured by the  
13 collateral, including the cost of any insurance, and the payment of taxes or fees  
14 associated with the collateral;

15 (b) the risk of accidental loss or damage is borne by the debtor to the extent  
16 of a deficiency in any insurance coverage; and

17 (c) the secured party may hold as additional security any increases received  
18 from the collateral except money, and shall apply money to reduce the secured  
19 obligation unless the money is remitted to the debtor.

20 Section 14. Request for accounting or statement of account.

21 (1) A debtor may—

22 (a) request an accounting of the unpaid obligations secured by collateral;

23 (b) request that a secured party approve or correct a list of what the debtor  
24 believes to be the collateral securing an obligation; or

1 (c) request that a secured party approve or correct a statement indicating  
2 what the debtor believes to be the aggregate amount of unpaid obligations secured  
3 by collateral as of a specified date.

4 (2) A secured party shall comply with a request under subsection (1) within two  
5 weeks after receipt of such request. A debtor shall be entitled without charge to one  
6 response to a request under this section during any six-month period. The secured party  
7 may require payment of a reasonable charge for each additional response within a six-  
8 month period.

9 (3) An account debtor that has received notification of an assignment of the account  
10 shall be entitled to receive from the assignee a signed record that releases the account  
11 debtor from any further obligation to the assignee, if there is no outstanding secured  
12 obligation and the assignee has no commitment to make advances, incur obligations, or  
13 otherwise give value. The release shall be sent as soon as reasonably practicable, but not  
14 more than ten days after the secured party receives a demand from the debtor. This  
15 subsection shall not apply to the sale of an account or chattel paper.

16 Section 15. Attachment of security interest to collateral.

17 (1) A security interest shall attach to collateral and becomes enforceable against the  
18 debtor and third parties with respect to the collateral only if—

19 (a) value has been given by the secured party to the debtor;

20 (b) the debtor has rights in the collateral or the power to transfer rights in  
21 the collateral to a secured party; and

22 (c) one of the following conditions is met:

23 (i) the debtor has signed a security agreement that provides a  
24 description of the collateral;



1 (ii) the collateral is in the possession of the secured party pursuant to  
2 the debtor's security agreement; or

3 (iii) the collateral is deposit accounts and the secured party has  
4 control.

5 (2) Unless otherwise agreed, the attachment of a security interest to collateral shall  
6 give the secured party the right to proceeds and shall be attachment of a security interest in  
7 a guarantee or other supporting obligation for the collateral.

8 (3) The attachment of a security interest to a right to payment or performance  
9 secured by a security interest in personal property or a mortgage in real property shall be  
10 attachment of a security interest to the security interest or mortgage.

11 (4) Goods shall be determined to be equipment, inventory, farm products, or  
12 consumer goods at the time that a security interest attaches to the goods.

13 (5) For the purposes of subsection (1)(b), a debtor shall have rights in timber to be  
14 cut when the timber is cut, and in as-extracted collateral at the time that the minerals  
15 subject to the security interest are extracted.

16 Chapter 3 – Perfection of Security Interests

17 Section 16. Perfection of a security interest.

18 (1) A security interest shall be perfected when it has attached to the collateral and a  
19 means of perfection has been completed. There shall be four means of perfecting a security  
20 interest—

21 (a) the filing of a notice in the filing office;

22 (b) possession of the collateral by the secured party;

23 (c) control of a deposit account by the secured party; and

1 (d) perfection upon attachment of the security interest to collateral, without  
2 filing a notice.

3 (2) To perfect a security interest a notice shall be filed in the filing office, unless this  
4 Act provides otherwise.

5 **Section 17. Security interests that must be or may be perfected by possession.**

6 (1) A security interest in money shall be perfected only by the secured party taking  
7 possession of the money, except for cash proceeds.

8 (2) A security interest in goods, instruments, documents, or chattel paper may be  
9 perfected by the secured party's taking possession, and without filing a notice.

10 (3) A security interest perfected by possession shall be effective from the time  
11 possession is taken and continues only so long as possession is retained, unless otherwise  
12 specified in this Act.

13 (4) A security interest, other than a security interest in money, perfected by  
14 possession under this section may also be perfected by filing a notice before, during, or  
15 after a period of possession by a secured party.

16 **Section 18. Security interest in a deposit account perfected by control.**

17 (1) A security interest in a deposit account may be perfected by the secured party's  
18 taking control of the deposit account, and without filing a notice.

19 (2) A secured party shall be deemed to have control of a deposit account if—

20 (a) the secured party is the bank with which the deposit account is  
21 maintained;

22 (b) the debtor, secured party, and bank have agreed in an authenticated  
23 record that the bank will comply with instructions originated by the secured party

1 directing disposition of the funds in the deposit account without further consent by  
2 the debtor; or

3 (c) the secured party becomes the bank's customer with respect to the  
4 deposit account.

5 (3) Where a secured party has satisfied subsection (2), the secured party shall be  
6 deemed to have control of the deposit account, regardless of whether or not the debtor  
7 retains the right to direct the disposition of funds from the deposit account.

8 **Section 19. Security interests that are perfected upon attachment.**

9 (1) The following security interests shall be perfected when they attach to the  
10 collateral and without the filing of a notice:

11 (a) A purchase-money security interest in consumer goods.

12 (b) A security interest in proceeds, if the underlying security interest is  
13 perfected.

14 (c) An assignment for the benefit of all creditors of the transferor and  
15 subsequent transfers by the assignee thereunder.

16 **Section 20. Perfection of a security interest in a motor vehicle.**

17 A security interest in a motor vehicle may be perfected by filing a notice that  
18 describes the motor vehicle generally or by serial number in a manner prescribed by the  
19 filing office.

20 **Section 21. Security interests in documents and goods covered by documents.**

21 (1) While goods are in the possession of a bailee that has issued a document covering  
22 the goods, a security interest in the goods may be perfected by perfecting a security interest  
23 in the document.

1           (2) Any security interest in goods perfected by filing a notice during the period that  
2 goods are in the possession of the bailee shall be subordinate to a security interest perfected  
3 in the document.

4           Section 22. Perfection of security interests in supporting obligations.

5           (1) Perfection of a security interest in collateral also perfects a security interest in a  
6 guarantee supporting the collateral.

7           (2) Perfection of a security interest in a right to payment or performance also  
8 perfects a security interest in a mortgage on real property securing the right to payment or  
9 performance.

10          (3) The filing of a notice shall not be required to perfect a security interest in a  
11 guarantee or mortgage under subsections (1) and (2).

12          Section 23. Continuity of perfection.

13          (1) A security interest shall be perfected continuously if it is first perfected in one  
14 manner and later perfected in another manner, if there is no period during which it is not  
15 perfected.

16          (2) If a secured party assigns a perfected security interest, a notice need not be filed  
17 under this Act to continue perfection of the security interest against creditors of the debtor,  
18 transferees from the debtor, and lien holders.

19          (3) A security interest in proceeds shall be a continuously perfected security interest  
20 if the security interest in the original collateral was perfected. The security interest in  
21 proceeds shall be unperfected 20 days after the debtor receives the proceeds unless:

22               (a) a filed notice covers the original collateral, and the proceeds are cash  
23 proceeds or proceeds of a nature described in the notice; or

1 (b) the security interest in the proceeds is perfected before the expiration of  
2 the 20-day period.

3 **Section 24. Continuation of a security interest in collateral and proceeds.**

4 (1) A security interest shall continue in collateral notwithstanding sale, lease, license,  
5 exchange, or other disposition of the collateral, except as otherwise provided in this Act or  
6 as otherwise agreed.

7 (2) Upon the disposition of collateral, a security interest shall attach to any proceeds  
8 of the collateral, except as otherwise provided in this Act or agreed upon by the parties.

9 **Chapter 4 – Priority among Security Interests in the Same Collateral**

10 **Subchapter A – General Rules**

11 **Section 25. Multiple security interests in collateral.**

12 (1) The priority of a security interest shall be measured from the time the first  
13 notice is filed covering the collateral, or the time the security interest is first perfected,  
14 whichever is earlier, if there is no time after the first time of filing or perfection at which  
15 the notice was ineffective or the continuity of perfection was interrupted.

16 (2) Unless otherwise provided in this Act, among conflicting security interests the  
17 following shall apply:

18 (a) The first security interest to attach to collateral has priority among  
19 security interests for which no effective notice covers the collateral and for which  
20 there is no perfection.

21 (b) A perfected security interest has priority over a security interest that is  
22 not perfected.

23 (c) The first security interest for which a notice is filed or for which there is  
24 perfection has priority where conflicting security interests are perfected.

1 (3) A date of filing or perfection as to collateral shall be deemed to be the date of  
2 filing or perfection of a security interest in proceeds.

3 Section 26. Priority of lien holder.

4 (1) A security interest shall have priority over the rights of a lien holder unless a  
5 notice of the rights of the lien holder is filed in accordance with this Act—

6 (a) before the security interest is perfected; and

7 (b) before a notice covering the collateral is filed and a security agreement is  
8 signed by the debtor.

9 Section 27. Priority of lien arising by operation of law.

10 A lien or right of retention in goods arising by operation of law in favor of a person  
11 to secure payment for materials or services with respect to the goods shall have priority  
12 over a perfected security interest while the goods are in the possession of the person  
13 holding the lien or right of retention if the person provided the materials or services in the  
14 ordinary course of business.

15 Section 28. Future advances.

16 If a perfected security interest secures an obligation by the secured party to make  
17 future advances, the rights of a lien holder shall have priority over the security interest  
18 with respect to advances made after the secured party has actual knowledge of the interest  
19 of the lien holder or more than twenty days after a notice of the interest of the lien holder is  
20 filed in the filing office, whichever occurs first.

21 Subchapter B – Rights of Transferees of Collateral

22 Section 29. Buyers of collateral

1 (1) Except as otherwise provided in this section, a buyer shall take collateral free of  
2 a security interest if the buyer gives value for the collateral without actual knowledge of the  
3 security interest and before it is perfected.

4 (2) Except as otherwise provided in this Act, a buyer, other than a secured party, of  
5 chattel paper, documents, goods, or instruments shall take such property free of a security  
6 interest if the buyer gives value and receives delivery of the collateral without knowledge of  
7 the security interest and before it is perfected.

8 (3) A buyer in the ordinary course of business shall take goods free of a security  
9 interest in the goods, even if the security interest is perfected and even if the buyer knows  
10 of its existence.

11 (4) A buyer of goods that are consumer goods of the seller shall take the goods free  
12 of a security interest regardless of whether or not the security interest is perfected, if--

13 (a) the person buys and takes delivery of the goods without actual knowledge  
14 of the security interest; and

15 (b) before a notice is filed that describes the goods.

16 (5) A person that buys a motor vehicle shall take the motor vehicle free of a prior  
17 security interest only if--

18 (a) the person buys without actual knowledge of the security interest; and

19 (b) the motor vehicle was not described, or was incorrectly described, by  
20 serial number in a filed notice.

21 (6) A person that buys farm products for use as consumer goods shall take the farm  
22 products free of any security interest.

1           (7) A buyer in ordinary course of business of the seller, buying oil, gas, or other  
2 minerals at the wellhead or minehead or after extraction shall take such property free of  
3 an interest arising out of a mortgage or other encumbrance on real property.

4           Section 30. Lessees of goods.

5           (1) Except as otherwise provided in this section, a lessee of goods shall take its  
6 leasehold interest free of a security interest in the goods if the lessee receives delivery of the  
7 goods:

8                   (a) without actual knowledge of the security interest; and

9                   (b) before the security interest is perfected.

10           (2) A lessee in the ordinary course of business shall take a leasehold interest free of a  
11 security interest in the goods even if the security interest is perfected and even if the lessee  
12 knows of its existence.

13           (3) A lessee shall take a motor vehicle free of a security interest only if the lessee  
14 leased:

15                   (a) without actual knowledge of the security interest; and

16                   (b) the motor vehicle was not described, or was incorrectly described, by  
17 serial number in a filed notice.

18           Section 31. Assignments.

19           (1) A person may assign all or part of the person's rights in accounts, chattel paper,  
20 instruments, or other intangible property.

21           (2) The assignee shall be subject to all the terms of the agreement between the  
22 account debtor and assignor.



1           (3) No communication to the account debtor shall be required for attachment,  
2 perfection or enforcement of a security interest arising from an assignment, except as  
3 provided in this section.

4           (4) After receiving written advice of an assignment from the assignor or assignee,  
5 the account debtor shall perform the obligation by paying the assignee. However, if  
6 requested by the account debtor, the assignee shall furnish timely and sufficient evidence of  
7 the assignment, and unless the assignee complies, the account debtor may perform the  
8 obligation by paying the assignor.

9           (5) Unless an account debtor has made an enforceable agreement not to assert  
10 defenses or claims, the rights of an assignee shall be subject to the following:

11                   (a) All terms of the agreement between the account debtor and assignor and  
12 any defense or claim in recoupment arising from the transaction that gave rise to  
13 the contract.

14                   (b) Any other defense or claim of the account debtor against the assignor  
15 that accrues before the account debtor receives a notification of the assignment  
16 authenticated by the assignor or the assignee.

17           (6) Notwithstanding subsection (5), the claim of an account debtor against an  
18 assignor may be asserted against an assignee only to reduce the amount the account debtor  
19 owes.

20           Section 32. Non-assignability clauses.

21           (1) Except as provided with respect to the purchase of chattel paper and  
22 instruments, an agreement between a secured party and an account debtor shall be  
23 unenforceable if it prohibits, requires consent, or otherwise restricts—

24                   (a) the creation, attachment, or enforcement of a security interest; or

1 (b) the sale or assignment of an account, a lease, or chattel paper.

2 Section 33. Subordination of priority.

3 A person entitled to priority under this Act may agree to modify or forego the  
4 priority, and may do so without filing or amending a notice with respect to the change in  
5 priority.

6 Subchapter C – Purchase-Money Security Interests

7 Section 34. Notice of purchase-money security interest.

8 If a person files a notice with respect to a purchase-money security interest in goods  
9 before or within five (5) days after the debtor takes possession of the goods, the security  
10 interest shall have priority over the rights in the goods of a buyer, lessee, or lien holder  
11 which arise between the time the security interest attaches and the time of filing of the  
12 notice.

13 Section 35. Priority of purchase-money security interest in equipment.

14 A perfected purchase-money security interest in equipment shall have priority over  
15 a conflicting security interest in the same collateral and the interest of a lien holder, and  
16 shall also have priority in its proceeds, if the purchase-money security interest is perfected  
17 when the debtor receives possession of the equipment, or within five (5) days thereafter.

18 Section 36. Priority of purchase-money security interest in inventory or livestock.

19 (1) A perfected purchase-money security interest in inventory or livestock shall have  
20 priority over a conflicting security interest in the same inventory or livestock if—

21 (a) the purchase-money security interest is perfected when the debtor  
22 receives possession of the inventory or livestock; and

23 (b) the purchase-money secured party notifies in writing, the holder of the  
24 conflicting security interest if the holder had filed a notice covering the same types

1 of inventory or livestock before the time of a notice filed by the purchase-money  
2 secured party.

3 (2) An effective notification under subsection (1)(b) shall describe the inventory or  
4 livestock and state that the person giving the notification has or expects to acquire a  
5 purchase-money security interest in inventory or livestock of the debtor.

6 **Subchapter D – Priority in Special Classes of Collateral**

7 **Section 37. Crops.**

8 A perfected security interest in crops growing on real property shall have priority  
9 over a conflicting interest of the owner, a lessor, or a mortgagee if the debtor is in  
10 possession of the real property or has an interest of record in the real property.

11 **Section 38. Accessions.**

12 (1) A security interest may be created in an accession and continues in collateral  
13 that becomes an accession. If a security interest is perfected when the collateral becomes  
14 an accession, the security interest shall remain perfected in the accession.

15 (2) Upon default—

16 (a) a secured party may remove an accession from other goods if the security  
17 interest in the accession has priority over the claims of every person having an  
18 interest in the whole;

19 (b) a secured party that removes an accession shall promptly reimburse the  
20 holder (other than the debtor) of any interest in the whole or the other goods for the  
21 cost of repair of any physical injury to the whole;

22 (c) a secured party that removes an accession shall promptly reimburse any  
23 other secured party for the cost of repair of any damage to the property;

1 (d) the secured party shall not be required to reimburse the debtor or other  
2 secured party for any diminution in value caused by the absence of the goods  
3 removed or by any necessity for replacing them; and

4 (e) a person entitled to reimbursement may refuse permission to remove the  
5 accession until the secured party gives adequate assurance for the performance of  
6 the obligation to reimburse.

7 **Section 39. Commingled goods.**

8 (1) A security interest may not be created in goods that have become commingled  
9 goods. However, a security interest may attach to a product or mass that results when  
10 goods subject to a security interest become commingled goods.

11 (2) If collateral becomes commingled goods, a security interest in the collateral  
12 attaches to the product or mass.

13 (3) If a security interest in collateral is perfected before the collateral becomes  
14 commingled goods, the security interest that attaches to the product or mass is perfected  
15 without the need for filing a notice. The priority of the security interest in the product or  
16 mass is measured from the time of perfection of the security interest in the collateral that  
17 became commingled.

18 (4) If more than one security interest attaches to the product or mass the following  
19 shall apply:

20 (a) A security interest that is perfected shall have priority over a security  
21 interest that is unperfected at the time the collateral becomes commingled goods.

22 (b) The first security interest to attach to the product or mass shall have  
23 priority among unperfected security interests.

1 (c) If more than one security interest is perfected, the security interests shall  
2 rank equally in proportion to the value of the collateral at the time it became  
3 commingled goods.

4 **Section 40. Fixtures.**

5 (1) A security interest may be created in goods that are fixtures. A security interest  
6 may continue in goods that become fixtures.

7 (2) Notwithstanding subsection (1), a security interest in ordinary building materials  
8 shall be unenforceable when the building materials are incorporated into real property.

9 (3) This section shall not determine priority in readily removable factory machines,  
10 office machines, and domestic appliances.

11 (4) A security interest in fixtures shall be subordinate to all other real rights in real  
12 property, except as provided in this section.

13 (5) A perfected security interest in fixtures shall have priority over the interest of  
14 the owner of real property, or a mortgagee notwithstanding any provision in the mortgage,  
15 if a notice is filed before the interest of the owner or the mortgagee is registered.

16 (6) A perfected security interest in fixtures shall have priority over the interest of a  
17 lien holder if a notice is filed before the filing of a notice of the interest of the lien holder as  
18 required by this Act.

19 (7) A perfected security interest in fixtures shall have priority over the interest of  
20 the owner of real property, a lien holder, or a mortgagee notwithstanding any provision in  
21 the mortgage, if the security interest is a purchase money security interest given by the  
22 debtor before the goods become fixtures, and a notice is filed before the goods become  
23 fixtures or within five days thereafter. The priority established in this subsection is not  
24 effective against a person who holds a construction mortgage. A mortgage is a

1 construction mortgage to the extent that it secures an obligation to pay for the construction  
2 of an improvement on real property, if the mortgage is registered and if the mortgage  
3 indicates that it secures such an obligation.

4 (8) Upon default the following shall apply:

5 (a) If a security agreement covers goods that are or become fixtures, a  
6 secured party may proceed under this Act or in accordance with rights with respect  
7 to real property.

8 (b) Subject to the other provisions of this Act, if a secured party holding a  
9 security interest in fixtures has priority over all owners and encumbrancers of the  
10 real property, the secured party, after default, may remove the collateral from the  
11 real property.

12 (c) A secured party that removes a collateral that is a fixture shall promptly  
13 reimburse any encumbrancer or owner of the real property, other than the debtor,  
14 for the cost of repair of any physical injury caused by the removal.

15 (d) The secured party shall not be required to reimburse the encumbrancer  
16 or owner for any diminution in value of the real property caused by the absence of  
17 the goods removed or by any necessity of replacing them.

18 (e) A person entitled to reimbursement may refuse permission to remove  
19 until the secured party gives adequate assurance for the performance of the  
20 obligation to reimburse.

21 Subchapter E – Security Interests in Chattel Paper, Documents and Instruments

22 Section 41. Priority rights of purchasers of chattel paper and instruments.

1 (1) A purchaser of chattel paper or instruments shall have priority over a  
2 conflicting security interest in the chattel paper or instruments and also has priority with  
3 respect to the proceeds of the chattel paper or instruments if:

4 (a) in the ordinary course of the purchaser's business, the purchaser gives  
5 new value and takes possession of the chattel paper or instruments; and

6 (b) the chattel paper or instruments do not indicate an assignment to the  
7 person holding the conflicting security interest.

8 **Section 42. Priority of rights of purchasers of documents and instruments.**

9 (1) This Act shall not limit the rights of a holder in due course of a negotiable  
10 instrument, a holder to which a negotiable document of title has been duly negotiated, or a  
11 protected purchaser of a security. These holders or purchasers shall take priority over an  
12 earlier security interest, even if perfected, to the extent provided in the law on negotiable  
13 instruments.

14 (2) Filing a notice shall not constitute notice of a claim or defense to the holders,  
15 purchasers, or persons described in subsection (1).

16 **Subchapter F – Security Interests in Deposit Accounts**

17 **Section 43. Priority of conflicting security interests in deposit accounts**

18 (1) A security interest held by a secured party having control of a deposit account  
19 shall have priority over a conflicting security interest held by a secured party that does not  
20 have control.

21 (2) Except as otherwise provided in subsections (3) and (4), security interests  
22 perfected by control shall have priority according to the time of obtaining control.

1 (3) Except as otherwise provided in subsection (4), a security interest held by the  
2 bank with which the deposit account is maintained shall have priority over a conflicting  
3 security interest held by another secured party.

4 (4) A security interest in a deposit account perfected by control under section  
5 18(2)(c) shall have priority over a security interest held by the bank with which the deposit  
6 account is maintained.

7 **Section 44. Effect of transfers of money and funds from deposit accounts.**

8 (1) A transferee of money shall take the money free of a security interest unless the  
9 transferee acts in collusion with the debtor in violating the rights of the secured party.

10 (2) A transferee of funds from a deposit account takes the funds free of a security  
11 interest in the deposit account unless the transferee acts in collusion with the debtor in  
12 violating the rights of the secured party.

13 **Section 45. Right of recoupment or setoff against deposit account.**

14 (1) Except as otherwise provided in subsection (2), a bank with which a deposit  
15 account is maintained may exercise any right of recoupment or setoff against a secured  
16 party that holds a security interest in the deposit account.

17 (2) A setoff by a bank based on a claim against a debtor shall be ineffective against a  
18 secured party that has established control of a deposit account by becoming the bank's  
19 customer with respect to the deposit account.

20 **Chapter 5 – Filing Notice**

21 **Section 46. The Filing office.**

22 (1) A filing office shall be established in the Commission.

23 (2) A filing officer shall be appointed to administer the day-to-day activities of the  
24 filing office.



1 (3) All obligations of the Commission under this Act shall be fully discharged by the  
2 creation and businesslike maintenance of an electronic information system that provides  
3 for the filing of notices of security interests and notices of the interests of lien holders, and  
4 for the search of such notices by any person.

5 (4) No person shall have a claim against the Commission for errors in the filing  
6 office records committed by a person that files a notice, or for failure to provide filing  
7 office services for reasons beyond the control of the Commission.

8 (5) The duties of the filing office shall be merely administrative and the following  
9 shall apply:

10 (a) By filing a notice or refusing to file a notice, the filing office shall not be  
11 deemed to have determined the sufficiency, correctness, authenticity, or validity of  
12 the notice or any information contained in the notice.

13 (b) The filing of a notice shall not create a security interest in collateral or  
14 provide evidence that a security interest in collateral exists.

15 (6) Except as specified in subsection (7), the filing office is the place to file—

16 (a) a notice of a security interest in collateral;

17 (b) a notice of the interest of a lien holder; and

18 (c) a notice of the interest of a secured party in a transaction concluded prior  
19 to the effective date of this Act as provided in this Act.

20 (7) The Clerk of Court and the Land Court shall be the place to file a notice of a  
21 security interest in fixtures, timber to be cut, or as-extracted collateral.

22 **Section 47. Duties of the filing office.**

23 (1) For each notice filed, the filing office shall—

24 (a) assign a unique filing number in the case of an initial notice;

1 (b) assign a unique number to notices other than the initial notice;

2 (c) create a record that bears the filing number and the date and time of  
3 filing; and

4 (d) maintain the filed record for public inspection.

5 (2) The filing office shall index an initial notice by the name of the debtor and shall  
6 index all filed records relating to an initial notice in a manner that associates the initial  
7 notice and all filed records relating to the initial notice. For notices containing serial  
8 numbers of motor vehicles, the filing office shall maintain an index of serial numbers.

9 (3) The filing office shall maintain the capability to retrieve a record by the name of  
10 the debtor and by the filing number assigned to the initial notice to which the record  
11 relates, and that associates an initial notice and all records relating the initial notice with  
12 one another. For notices containing the serial number of a motor vehicle, the filing office  
13 shall maintain the capability to retrieve a record by the serial number of the motor vehicle.

14 (4) The filing office shall maintain records of lapsed or terminated notices for a  
15 period of ten (10) years beyond the date of lapse or termination.

16 **Section 48. Regulations and fees.**

17 (1) The Commission may promulgate regulations that establish---

18 (a) a reasonable fee for filing a notice and the manner of payment of fees;

19 (b) a reasonable fee for issuing a certified search report;

20 (c) the manner of filing notices; and

21 (d) the manner of submitting search requests.

22 (2) The Commission may promulgate any other regulations necessary to effectuate  
23 the intent of this Act.

24 **Section 49. Notice of the interest of a lien holder.**

1           The notice of the interest of a lien holder shall be limited to identification of the lien  
2 holder, identification of the person owing payment or performance to the lien holder, and a  
3 description of personal property against which the lien holder claims or may claim a right,  
4 in the same manner as provided in this Act for the filing a notice of a security interest.

5           **Section 50. Access to filing office records.**

6           (1) The information contained in notices shall be public records.

7           (2) The indexes and other records created by the filing office with respect to notices,  
8 in any form or medium, shall be public records.

9           (3) Any person shall have a right to inspect and obtain copies of the records of the  
10 filing office.

11           **Section 51. Information from filing office.**

12           (1) The filing office shall communicate the following information to any person that  
13 requests it:

14           (a) Whether there is filed on a date and time specified by the filing office, any  
15 notice that designates a particular debtor and has not lapsed with respect to all  
16 secured parties.

17           (b) The filing number, and the date and time of filing of each notice.

18           (c) The name and address of each debtor and secured party on each notice.

19           (d) All of the information contained in each notice.

20           (2) A request may be made to search the records of the filing office by any of the  
21 following criteria:

22           (a) The filing number of a notice.

23           (b) The name of a debtor.

24           (c) The serial number of a motor vehicle.

1           **(3) In complying with its duty, the filing office may communicate information in any**  
2 **medium. However, if requested, the filing office shall communicate the requested**  
3 **information by issuing a written certificate that shall be admissible into evidence in the**  
4 **Supreme Court without extrinsic evidence of its authenticity.**

5           **Section 52. Initial notice.**

6           **(1) An initial notice shall be sufficient if it—**

7                   **(a) identifies the debtor and provides a mailing address;**

8                   **(b) identifies the secured party and a mailing address; and**

9                   **(c) describes the collateral covered by the notice as set forth in Section 11.**

10           **(2) A person is entitled to file an initial notice only if the debtor authorizes the notice**  
11 **in a signed record. The debtor's authorization shall not be required to be contained in the**  
12 **notice, need not be disclosed to the filing office, and may be given after filing.**

13           **(3) By signing a security agreement, a debtor authorizes the filing of an initial notice**  
14 **covering the collateral described in the security agreement, and proceeds of the collateral,**  
15 **regardless of whether or not the security agreement expressly covers proceeds.**

16           **(4) A notice may be filed before a security agreement is concluded or before a**  
17 **security interest attaches to collateral.**

18           **(5) A notice substantially complying with the requirements of this Act shall be**  
19 **effective, even if it is insufficient under this section, unless the insufficiency makes the**  
20 **notice seriously misleading. A notice that insufficiently provides the name of the debtor**  
21 **shall be deemed to be seriously misleading.**

22           **(6) A record of a mortgage shall be effective, from the date of recording, as a notice**  
23 **covering fixtures, timber to be cut, or as-extracted collateral only if—**

24                   **(a) the record indicates the goods or accounts that it covers;**

1 (b) the goods that are, or that are to become, fixtures related to the real  
2 property described in the record, or the collateral is related to the real property  
3 described in the record and is as-extracted collateral or timber to be cut;

4 (c) the record satisfies the requirements for a notice in this section other than  
5 an indication that it is to be filed in the real property records; and

6 (d) the record is duly recorded.

7 **Section 53. Name of debtor and secured party.**

8 (1) A notice shall be deemed to have sufficiently provided the name of the debtor  
9 where—

10 (a) the notice contains the name of the person as it appears on the records of  
11 the Social Security Administration of the Republic of Palau;

12 (b) the debtor is a natural person and not a citizen of the Republic of Palau  
13 and the notice contains the name of the person as indicated on the person's  
14 passport;

15 (c) the debtor is an entity and the notice contains the name of the debtor as  
16 shown on the records of the Office of the Attorney General in the case of an entity  
17 incorporated under the law of Palau or, for any other entity, the documents that  
18 establish that entity.

19 (d) the debtor is a foreign entity authorized to do business under the law of  
20 Palau and the notice provides the name of the debtor as shown on the records of the  
21 Office of Attorney General; or

22 (e) the debtor is a foreign entity not authorized to do business under the law  
23 of Palau and the notice provides the name of the debtor as shown on the appropriate  
24 registry in the country where the foreign entity is organized.

1 (2) A notice that sufficiently provides the name of the debtor shall not be rendered  
2 ineffective by the presence or absence of a trade name or other name of the debtor. A  
3 notice that provides only the debtor's trade name shall be deemed to have not sufficiently  
4 provided the name of a debtor.

5 (3) A notice may provide the name of more than one debtor and the name of more  
6 than one secured party.

7 (4) The failure to indicate on a notice that a person is a representative of the secured  
8 party does not affect the sufficiency of a notice.

9 **Section 54. Effect of changes in circumstance.**

10 (1) A filed notice shall remain effective with respect to collateral that is sold,  
11 exchanged, leased, licensed, or otherwise disposed of and in which a security interest  
12 continues, even if the secured party knows of or consents to the disposition.

13 (2) If a debtor changes its name so that a filed notice becomes seriously misleading,  
14 the notice shall remain effective to perfect a security interest in collateral acquired by the  
15 debtor before or within four months after the change. However, the notice shall remain  
16 effective to perfect a security interest in collateral acquired by the debtor more than four  
17 months after the change only if an amendment to the notice is filed within four months of  
18 the change.

19 (3) Except as provided for a change of debtor name under subsection (2), a notice  
20 shall remain effective if, after the notice is filed, a change of circumstances renders the  
21 notice seriously misleading.

22 **Section 55. Duration of notice and effect of lapse.**

23 (1) A filed notice shall remain effective for a period of five (5) years after the date of  
24 filing, unless the notice is continued or terminated.

1           (2) The effectiveness of a filed notice shall lapse on the expiration of the five (5) year  
2 period unless, before the lapse, a continuation statement is filed.

3           (3) Upon lapse, a notice shall become ineffective and any security interest that was  
4 perfected by the notice becomes unperfected, unless the security interest is perfected  
5 without filing.

6           (4) If the security interest becomes unperfected upon lapse, it shall be deemed to  
7 have never been perfected against a purchaser of the collateral for value.

8           **Section 56. Amendment of notice.**

9           (1) An initial notice may be amended by one or more amendments. To be effective  
10 an amendment shall—

11                   (a) identify the initial notice by its filing number;

12                   (b) identify the secured party on the notice that authorizes the amendment;

13                   (c) indicate that it is an amendment to the notice; and

14                   (d) provide all of the information required of an initial notice, completely  
15 restating the notice in a manner that reflects the amended state of the notice.

16           (2) If an amendment adds collateral covered by a notice, or adds a debtor to a  
17 notice, it shall be effective if the debtor authorizes the filing in a signed record. By signing  
18 a security agreement, a debtor authorizes the filing of an amendment, covering the  
19 collateral described in the security agreement, and proceeds of the collateral, whether or  
20 not the security agreement expressly covers proceeds.

21           (3) If there is more than one secured party on the notice, the amendment shall be  
22 effective if a secured party authorizes the filing in a signed record.

23           (4) An amendment that adds collateral shall be effective as to the added collateral  
24 only from the date of the filing of the amendment.

1 (5) An amendment that adds a debtor shall be effective as to the added debtor only  
2 from the date of the filing of the amendment.

3 (6) An amendment other than an amendment to add collateral or add a debtor shall  
4 be effective only if a secured party on the notice authorizes the filing of the amendment in a  
5 signed record.

6 (7) An amendment shall be ineffective if it purports to delete all secured parties and  
7 fails to provide the name of a new secured party, or purports to delete the names of all  
8 debtors and fails to provide the name of a debtor not previously named on the notice.

9 (8) If there is more than one secured party on the notice, any secured party or all  
10 secured parties may authorize the filing of an amendment.

11 (9) The filing of an amendment does not extend the period of effectiveness of a  
12 notice.

13 **Section 57. Continuation of notice.**

14 (1) The period of effectiveness of a notice may be continued by filing a continuation  
15 statement that---

16 (a) identifies the initial notice by its filing number;

17 (b) identifies a secured party on the notice that authorizes the continuation  
18 statement; and

19 (c) indicates that the effectiveness of the notice, with respect to the secured  
20 party that authorized the filing, is to be continued.

21 (2) A continuation statement may be filed only within six months before the  
22 expiration of the 5-year period of the notice.



1           (3) Upon timely filing of a continuation statement, the effectiveness of the notice  
2 shall continue for a period of 5 years commencing on the day on which the notice would  
3 have become ineffective in the absence of the filing.

4           (4) The effectiveness of such a notice shall be continued only with respect to the  
5 secured party that authorized the filing of the continuation statement.

6           (5) Upon the expiration of the new 5-year period, the notice shall lapse with respect  
7 to the secured party unless, before the lapse, another continuation statement authorized by  
8 that secured party is filed.

9           (6) Succeeding continuation statements may be filed in the same manner to continue  
10 the effectiveness of the notice.

11           **Section 58. Termination of notice.**

12           (1) The effectiveness of a notice may be terminated by filing a termination statement  
13 that:

14                   (a) identifies the initial notice by its filing number;

15                   (b) identifies a secured party on the notice that authorizes the termination  
16 statement; and

17                   (c) indicates that the notice is no longer effective with respect to the interest  
18 of the secured party that authorized the filing of the termination statement.

19           (2) Within twenty (20) days after the secured party receives a written demand by  
20 the debtor, the secured party on a notice shall file a termination statement if—

21                   (a) there is no outstanding secured obligation and no commitment to make  
22 an advance, incur an obligation, or otherwise give value; or

23                   (b) the debtor did not authorize the filing of the initial notice; or

1 (c) the notice covers accounts or chattel paper that have been sold but as to

2 which

3 the account debtor or other person obligated has discharged its obligation.

4 (3) A termination statement shall terminate the effectiveness of a notice with respect  
5 to a secured party on the notice only if the termination statement is authorized in a signed  
6 record by that secured party. Upon the filing of an effective termination statement, the  
7 notice to which the termination statement relates becomes ineffective with respect to the  
8 authorizing secured party.

9 **Section 59. Effectiveness of notice.**

10 (1) An initial notice, amendment, continuation statement, or termination statement  
11 shall be effective at the time it is available to the public by means of a search of the records  
12 of the filing office as provided in this Act.

13 (2) The filing office may refuse to file a notice only because—

14 (a) in the case of an initial notice, the record does not provide the name of a  
15 debtor;

16 (b) in the case of an amendment, the record does not provide the name of a  
17 debtor, does not provide the filing number of the initial notice, or the record  
18 identifies an initial notice whose effectiveness has lapsed;

19 (c) in the case of a continuation statement, the record does not provide the  
20 filing number of the initial notice, or was not submitted within the permitted six-  
21 month time period;

22 (d) in the case of a termination statement, the record does not provide the  
23 filing number of the initial notice, or the record relates to an initial notice that has  
24 lapsed with respect to each secured party on the notice; or

1 (e) less than the full filing fee is tendered, or no other arrangement has been  
2 made for the payment of the fee.

3 (3) A record that the filing office refuses to accept for a reason other than one set  
4 forth in this section shall remain effective as a filed record except against a purchaser of  
5 the collateral that gives value in reasonable reliance upon the absence of the record from  
6 the filing office.

7 (4) If a filing office refuses to accept a record for filing, it shall promptly  
8 communicate the fact of and reason for its refusal to the person that presented the record.

9 (5) A notice authorized by one secured party on the notice does not affect the rights  
10 of another secured party on the notice.

11 (6) The failure of the filing office to index a record correctly shall not affect the  
12 effectiveness of the record.

13 **Section 60. Notice shall not constitute "constructive notice."**

14 A notice shall not constitute constructive notice to any person or knowledge of its  
15 existence or contents by any person.

16 **Chapter 6 – ENFORCEMENT OF SECURITY INTERESTS UPON DEFAULT**

17 **Section 61. Default.**

18 (1) Upon default, the secured party shall have the following rights.

19 (a) The right to possession or control of the collateral, as the secured party  
20 prefers, even if the security agreement is silent about possession or control.

21 (b) The right to dispose of the collateral.

22 (c) Other rights and remedies provided in this Act.

23 (d) Other rights and remedies in the security agreement.

24 (e) Any rights and remedies available under other law.

1 (2) The secured party may pursue any or all of its remedies simultaneously or  
2 consecutively.

3 (3) Pursuit of one remedy shall not preclude or prejudice the pursuit of another  
4 remedy.

5 (4) Upon default, if the collateral is a document, the secured party may proceed as  
6 to the document and as to the goods covered by the document. The secured party may  
7 proceed without judicial action if the document is in the possession of the secured party.

8 (5) A lessor of goods for a period greater than one year shall have the common law  
9 rights of a lessor upon default, and any other rights that may be provided by statute.

10 **Section 62. Collection rights of secured party**

11 (1) Upon default, with respect to accounts, chattel paper, or other rights to payment,  
12 the secured party shall be entitled to notify an account debtor or other person that owes  
13 payment to make payment to the secured party, and also to take possession or control of  
14 any proceeds.

15 (2) If the security interest secures a debt, the secured party shall pay the debtor any  
16 amount collected in excess of the secured debt, plus expenses allowed under this Chapter.  
17 Unless otherwise agreed, if there is a deficiency in collection, the debtor owes to the secured  
18 party the difference between the amount collected and the secured debt plus expenses  
19 allowed under this Chapter.

20 (3) If the transaction was a sale of accounts or chattel paper, the debtor is entitled to  
21 any surplus and is liable for any deficiency only if the security agreement so provides.

22 (4) The secured party may act under this section without judicial process,  
23 notwithstanding any other provision of this Act.

24 (5) If so agreed: and in any event after default—

1 (a) a secured party that is a bank with a security interest in a deposit account  
2 maintained by the bank and perfected by control may apply the balance of the  
3 deposit account to the obligation secured by the deposit account; and

4 (b) in other cases, a secured party that has a security interest in a deposit  
5 account perfected by control may instruct the bank to pay the balance of the deposit  
6 account to the secured party.

7 **Section 63. Secured party's right to possession or control.**

8 (1) Upon default, the secured party may take possession or control of collateral  
9 without legal proceedings if the secured party does not breach the peace in doing so.

10 (2) Upon default, the secured party may take possession or control of collateral and  
11 dispose of collateral by court order, and the following shall apply:

12 (a) The secured party shall be entitled to a special, expedited order from the  
13 court granting the secured party possession or control over the collateral.

14 (b) Issues at the hearing shall be limited to the existence of a security  
15 agreement covering the collateral and at least one event of default.

16 (c) An order to dispossess the debtor under this section may be appealed by  
17 the debtor, but no court shall stay the dispossession order or prevent the disposal of  
18 the collateral during the appeal process.

19 (3) If the security agreement so provides, the secured party may require the debtor  
20 to assemble the collateral and make it available to the secured party at a place to be  
21 designated by the secured party that is reasonably convenient to both parties.

22 (4) A secured party may render equipment unusable without removing it from its  
23 location, and may dispose of collateral at the debtor's place of business, residence, or any  
24 other location where the collateral is found.

1           **Section 64. Secured party's disposal of collateral after default.**

2           (1) After default, a secured party may sell, lease, license or otherwise dispose of any  
3 or all of the collateral.

4           (2) Disposal of the collateral may be made publicly or privately, and may be made in  
5 one or more contracts.

6           (3) Disposal may be as a unit or in parcels, at any time and place and on any terms  
7 consistent with the secured party's duties under this Act.

8           (4) The secured party shall give the debtor, and any other secured party from whom  
9 the secured party receives a written request, reasonable notice of the time and place of any  
10 public sale or the time at which any private sale or other intended disposal is to be made,  
11 unless communication is impractical because collateral is perishable or threatens to decline  
12 speedily in value. The debtor may waive the right to be informed.

13           (5) The secured party may buy the collateral at any sale that is open to the public.

14           **Section 65. Consequences of disposal of collateral.**

15           (1) The proceeds of disposal shall be applied in the following order:

16                   (a) the reasonable expenses of retaking, holding, preparing for disposal, and  
17 disposing of the collateral, including reasonable attorneys' fees and legal expenses  
18 incurred by the secured party;

19                   (b) the satisfaction of the secured obligation; and

20                   (c) the satisfaction of debt secured by any subordinate security interest in the  
21 collateral if a written demand is received before distribution of the proceeds is  
22 completed and if the holder of a subordinate security interest gives reasonable proof  
23 of the interest.

1 (2) The secured party shall account to the debtor for any surplus and, unless  
2 otherwise agreed, the debtor is liable for any deficiency.

3 (3) When the secured party transfers the debtor's property to a purchaser that acts  
4 in good faith and gives value for the collateral, the secured party shall transfer all its rights  
5 in the collateral to the purchaser and the security interest and all subordinate security  
6 interests and claims shall be discharged.

7 (4) The director of any office maintaining records of ownership of the collateral  
8 shall issue a new title to a purchaser for value, and if the director requests, the secured  
9 party shall provide authorization for the issuance of the new title in the form of a court  
10 order granting possession to the secured party, or the secured party's sworn affidavit that  
11 the transfer is made pursuant to this Act.

12 **Section 66. Retention of collateral.**

13 (1) A secured party may, after default, propose to retain the collateral in full or  
14 partial satisfaction of the secured obligation.

15 (2) The proposal shall be given to the debtor and to any other secured party from  
16 whom the secured party has received a written claim of an interest in the collateral.

17 (3) If the secured party receives an objection in writing from a person entitled to  
18 receive notice under subsection (2) within twenty (20) days after the notice was delivered,  
19 the secured party shall dispose of the collateral as provided in this Chapter.

20 (4) If no objection is received within the 20-day period, the secured party may retain  
21 the collateral.

22 **Section 67. Debtor's right to redeem collateral.**

23 (1) Unless otherwise agreed in writing, after default, the debtor or any other secured  
24 party may redeem the collateral by fulfilling all obligations secured by the collateral and by

1 paying expenses reasonably incurred by the secured party in taking possession, holding  
2 and preparing the collateral for disposal, including reasonable attorneys' fees and legal  
3 expenses.

4 (2) Redemption may take place only before the secured party has disposed of  
5 collateral or entered into a contract for its disposal or before the obligation has been  
6 discharged or the collateral has been retained as provided in this Chapter.

7 **Section 68. Determination of whether the secured party's conduct was commercially**  
8 **reasonable.**

9 (1) A secured party shall dispose of collateral only in a commercially reasonable  
10 manner when disposing of collateral or collecting an account.

11 (2) The fact that a greater amount could have been obtained by a collection,  
12 enforcement, disposition, or acceptance at a different time or in a different method from  
13 that selected by the secured party is not of itself sufficient to preclude the secured party  
14 from establishing that the collection, enforcement, disposition, or acceptance was made in a  
15 commercially reasonable manner.

16 (3) A disposition of collateral is made in a commercially reasonable manner if the  
17 disposition is made—

18 (a) in the usual manner on any recognized market;

19 (b) at the price current in any recognized market at the time of the  
20 disposition; or

21 (c) otherwise in conformity with reasonable commercial practices among  
22 dealers in the type of property that was the subject of the disposition.

23 (4) A collection, enforcement, disposition, or acceptance shall be deemed to have  
24 been commercially reasonable if it has been approved in any of the following:



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- (a) In a judicial proceeding.
- (b) By a bona fide creditors' committee.
- (c) By a representative of creditors.
- (d) By an assignee for the benefit of creditors.

(5) Approval under subsection (4) shall not be required to be obtained for a disposal of collateral to be commercially reasonable, and lack of approval shall not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

**Section 69. Secured party's liability for failure to comply with enforcement rules.**

(1) If the secured party does not comply with the requirements of this Act with respect to enforcement, then the disposal of collateral may be ordered or restrained by the court on appropriate terms and conditions.

(2) If the disposal has occurred, the debtor or any person entitled to be informed or whose security interest has been made known to the secured party prior to the disposal has a right to recover from the secured party any loss caused by a failure to comply with this

Chapter.

**Chapter 7 -- TRANSITION**

**Section 70. Transition.**

(1) This section shall apply to--

- (a) a transaction concluded prior to the effective date of this Act that would otherwise fall within the scope of this Act, referred to as a "prior transaction"; and
- (b) the right of a lien holder whose right arose prior to the effective date of this Act, referred to as a "prior lien".

(2) The validity, effect and enforcement of a prior transaction or prior lien shall be determined by reference to the law in effect when the prior transaction was concluded or the prior lien arose, except as provided otherwise in this section.

(3) The provisions of this Act on filing, priority, and enforcement shall apply to a security interest or notice of the right of a lien holder created by a prior transaction or prior lien only in the case of conflict with a security interest created under this Act.

(4) A creditor under a prior transaction and the holder of a prior lien may file a notice of its interest at any time. Such a notice is referred to in this section as a "transition notice."

(5) A transition notice may be filed in the same manner as provided for a notice of a security interest or notice of the right of a lien holder. The authorization of the debtor is not required.

(6) If a transition notice is filed—

(a) on or before the 60<sup>th</sup> day from the effective date of this Act, the interest created under the prior transaction or prior lien shall have priority over a security interest created under this Act, as provided under Chapter 2, with priority measured from the date of the commencement of this Act; or

(b) after the 60<sup>th</sup> day from the effective date of this Act, the interest created under the prior transaction or prior lien shall have priority over a security interest created under this Act, as provided under Chapter 2, with priority measured from the date of the filing of the notice of the prior transaction or prior lien.

(7) A security interest perfected under this Act shall have priority over the interest created by a prior transaction or prior lien if no transition notice is filed with respect to the prior transaction or prior lien, except as provided in subsection (6).

Chapter 8 – Commencement

Section 71. Effective Date.

1 (1) This Act, sections 1-72, inclusive, shall become an effective law after its approval  
2 by the President of the Republic of Palau, or after its becoming law without such approval,  
3 on the date that the Commission promulgates as the effective date pursuant to regulation.

4 (2) However, the effective date of this Act promulgated by the Commission shall not  
5 be prior to the date that the filing office is open and ready to receive notices.

6 (3) The Commission shall make all reasonable efforts to educate the public about  
7 the filing system prior to the effective date of this Act.

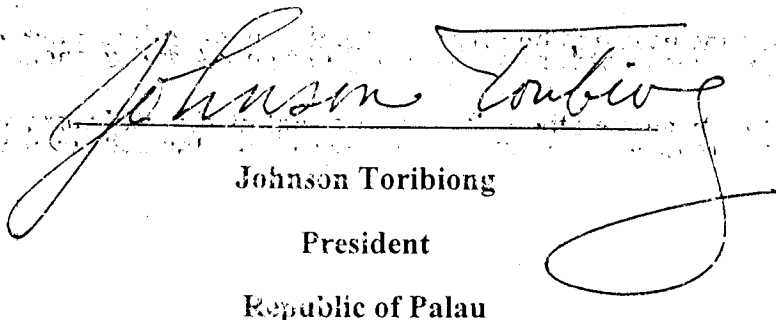
8 Section 72. Amendment. Section 807 of Title 41 of the Palau National Code shall  
9 hereby be amended to state as follows:

10 "Section 807. Lien for contributions.

11 All contributions, including penalties, interest accrued, and attorney's fees thereon,  
12 imposed or authorized under this chapter shall be a lien upon any property of the  
13 employer, having priority over all other claims and liens including liens for other taxes,  
14 subject to the Secured Transactions Act of 2011, and may be collected by levy upon such  
15 property in the same manner as the levy of an execution."

PASSED: April 19, 2012

Approved this 10<sup>th</sup> day of May, 2012.

  
Johnson Toribiong  
President  
Republic of Palau