

[AS LAID BEFORE THE NATIONAL ASSEMBLY]

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ORDINANCE NO.IV OF 2020

AN

ORDINANCE

*to amend the Financial Institutions (Secured Transactions)
Act, 2016*

WHEREAS it is expedient to amend the Financial Institutions (Secured Transactions) Act, 2016 (XXXI of 2016), for the purposes hereinafter appearing;

AND WHEREAS the Senate and the National Assembly are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

1. **Short title and commencement.**—(1) This Ordinance shall be called the Financial Institutions (Secured Transactions) (Amendment) Ordinance, 2020.

(2) It shall come into force at once.

2. **Amendment of section 1, Act XXXI of 2016.**—In the Financial Institutions (Secured Transactions) Act, 2016 (XXXI of 2016), hereinafter referred to as the said Act, in section 1, in sub-section (3), for the words “Federal Government” the word “Commission” shall be substituted.

3. **Amendments of section 2, Act XXXI of 2016.**—In the said Act, in section 2, in sub-section (1), —

(a) after clause (i), the following new clause shall be inserted, namely:—

“(ia) “acquisition security interest” means a security interest in tangible movable property which secures an obligation to pay any unpaid portion of the purchase price of that property, or other credit extended to enable the customer to acquire rights in the property to the extent that the credit is used for that purpose;”;

(b) in clause (ii), after the words “after-acquired”, the words “ and future” shall be inserted;

(c) in clause (ix), after the word “goods” the words “and products” shall be inserted;

(d) in clause (x), for the expression “clause (7) of sub-section (1) of section 2 of the Companies Ordinance, 1984 (XLVII of 1984)” the expression “clause (17) of sub-section (1) of section 2 of the Companies Act” shall be substituted;

(e) after clause (x), amended as aforesaid, the following new clauses shall be inserted, namely:—

“(xa) “Companies Act” means the Companies Act, 2017 (XIX of 2017);

- (xb) "Commission" shall have the same meaning as assigned to it under clause (g) of sub-section (1) of section 2 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);";
- (f) for clause (xx), the following shall be substituted, namely:-
- "(xx) "financing statement" means the prescribed form to be filed in the register for the purposes of perfecting one or more security interests;"
- (g) clause (xxi) shall be omitted;
- (h) in clause (xxii), for the expression "Companies Ordinance, 1984 (XLVII of 1984), the expression "Companies Act, 2017 (XIX of 2017)" shall be substituted;
- (i) in clause (xxiii), for the expression "Companies Ordinance, 1984 (XLVII of 1984), the expression "Companies Act, 2017 (XIX of 2017)" shall be substituted;
- (j) clauses (xxiv) and (xxxiii) shall be omitted;
- (k) for clause (xxxv), the following shall be substituted, namely:—
- "(xxxv) "possession of an electronic title document by a person" means the transfer of exclusive control of the electronic title document to that person in accordance with the procedures established by the system under which the electronic title document is issued;"
- (l) in clause (xxxvi), the words "or regulations" shall be omitted;
- (m) in clause (xxxvii), after the word and comma "exchange," the word "replacement" shall be inserted;
- (n) in clause (xlili), in sub-clause (b), for the expression "Companies Ordinance, 1984 (XLVII of 1984), the expression "Companies Act, 2017 (XIX of 2017)" shall be substituted;
- (o) for clause (xlvi), the following shall be substituted, namely:-
- "(xlvi) "secured creditor" means a financial institution or a consortium of financial institutions in whose favour a security interest is created by the customer and in the case of a security interest

that is an absolute assignment of receivables, the secured creditor is the assignee;”;

(p) for clause (xlviii), the following shall be substituted, namely:—

“(xlviii) “security interest” means,—

(a) a right, title, encumbrance or interest of any kind upon movable property created or provided for by a security agreement in relation to a transaction that in substance secures the payment or performance of a customer’s obligation without regard to the form of the transaction or the terminology used by the parties or the identity of the person who has title to the movable property, and includes any charge, mortgage, hypothecation, fixed charge, floating charge, assignment, lien, pledge, assignment of receivables by way of security and transactions under which a secured creditor retains title such as a finance lease, hire purchase agreement, sale and lease back arrangement, conditional sale agreement and retention of title arrangement, having similar effect; and

(b) an absolute assignment of receivables;”;

(q) after clause (xlviii), substituted as aforesaid, the following new clause shall be inserted, namely:—

“(xlviiiia) “specified” means specified through regulations made by the Commission;” and

(r) for clause (li), the following shall be substituted, namely:—

“(li) “title document” means a document in writing evidencing title to goods which is, by law or custom, transferable by delivery (whether with or without endorsement) or control and includes a bill of lading, dock warrant, warehouse receipt, railway receipt, airway bill, truck receipts or similar record issued by a person in the business of transporting or storing goods;”.

4. **Amendment of section 5, Act XXXI of 2016.**—In the said Act, in section 5, in clause (b), for the word “pledge” the words “security interest that is perfected by possession of collateral” shall be substituted.

5. **Amendments of section 6, Act XXXI of 2016.**—In the said Act, in section 6,—

(a) in sub-section (2), for clauses (b) and (c), the following shall be substituted, namely:—

“(b) for all security interests other than an absolute assignment of receivables, the obligations secured by the security interest, in accordance with sub-section (3);

(c) a description of the collateral in accordance with sub-section (3); and”;

(b) after sub-section (2), amended as aforesaid, the following new sub-sections shall be added, namely:—

“(3) The obligations and the collateral may be described in the security agreement in a manner that reasonably allows their identification.

(4) A description of secured obligations that indicates that the security interest secures all obligations owed to the secured creditor at any time or that states a maximum amount satisfies the standard referred to in sub-section (3).

(5) A description of collateral that indicates that the collateral consists of all of the customer’s movable property, or of all the customer’s movable property within a generic category, satisfies the standard referred to in sub-section (3).”.

6. **Amendment of section 8, Act XXXI of 2016.**—In the said Act, in section 8, after the word “goods” wherever occurring, the words “and products” shall be inserted.

7. **Amendment of section 9, Act XXXI of 2016.**—In the said Act, in section 9, after the words “after-acquired”, wherever occurring, the words “ and future” shall be inserted.

8. **Amendment of section 10, Act XXXI of 2016.**—In the said Act, in section 10,—

(a) for the marginal heading “future finance” the marginal heading “Obligations that may be secured” shall be substituted;

- (b) existing sub-section (1), shall be re-numbered as sub-section (1A) and before that the following shall be inserted, namely:-

“(1) Subject to sub-section (1A), a security interest may secure one or more obligations of any type, whether monetary or non-monetary, present or future, determined or determinable, conditional or unconditional, or fixed or fluctuating.”; and

- (c) in sub-section (2), for the expression “pledge and a security interest in collateral covered by a title document created pursuant to section 11” the expression “security interest that is perfected by possession of the collateral or, in the case of collateral covered by a title document, by possession of the title document” shall be substituted.

9. **Substitution of section 14, Act XXXI of 2016.**—In the said Act, for section 14, the following shall be substituted, namely:—

- “14. **Perfection.**—(1) A security interest in movable property may be perfected by registration as provided under this Act.
- (2) A security interest in a right to payment of funds credited in a deposit account may also be perfected by control.
- (3) A security interest in collateral covered by a title document may also be perfected by possession of the title document by the secured creditor.
- (4) A security interest in tangible movable property may also be perfected by possession of the property by the secured creditor.

Illustrations

- (a) Customer A (an entity) entered into a security agreement over shares with Secured Creditor B and delivered possession of the share certificates to Secured Creditor B on the 1st December. A financing statement was registered in the register in respect of the security interest on the 3rd December. The security interest in the shares was perfected by registration on the 3rd December.
- (b) Customer C (an entity) created a security interest over all present and after-acquired inventory in favour of Secured Creditor D on the 1st January. A financing statement was registered in the register in respect of the security interest on the 3rd January. The security interest was perfected by registration on the 3rd January.

- (c) Customer N (an entity) enters into an assignment agreement with Secured Creditor M on the 1st March pursuant to which Customer N assigns receivables under a supply agreement as security in favour of Secured Creditor M. A financing statement was registered in the register in respect of the assignment on the 3rd March. The assignment of receivables by way of security was perfected by registration on the 3rd March.
- (d) Customer G (an entity) leases a car from Secured Creditor H pursuant to a finance lease agreement on the 1st December. Secured Creditor H is registered as the owner of the car. A financing statement was registered in the register in respect of the finance lease on the 2nd December. The finance lease was perfected by registration on the 2nd December.
- (e) Customer F (a company) created a security interest in a right to payment of funds credited in a deposit account in favour of Secured Creditor G on the 1st December. The deposit account was maintained with the Depository Bank H. A control agreement was entered into between Customer F, Secured Creditor G and Depository Bank H on the 2nd December. The security interest in a right to payment of funds credited in a deposit account was perfected by control on the 2nd December.
- (f) Customer H (an entity) created a security interest over all its present and after-acquired movable property (including funds held in deposit accounts) in favour of Secured Creditor P on the 1st March. A financing statement in respect of the security interest was registered in the register on the 4th March. The hypothecation was perfected by registration on the 4th March. In this case, the security interest in a right to payment of funds credited in a deposit account was also perfected by registration.
- (g) Customer M (a company) created a security interest over its equipment in favour of Secured Creditor N on the 5th April. The security interest extended to any proceeds received from the sale of the equipment with the Creditor N. A financing statement was registered in the companies' register of mortgages and charges on the 10th April in respect of the security interest. The security interest was perfected by registration on the 10th April. The Secured Creditor N authorized in writing the sale of the equipment by

Customer M on the 5th May which resulted in Customer M receiving a cheque of one hundred thousand rupees in the form of proceeds arising from the sale of such equipment. In this case, Secured Creditor N's security interest in the cheque of one hundred thousand rupees (a negotiable instrument) was also perfected by registration on the 10th April."

10. **Amendments of section 15, Act XXXI of 2016.**—In the said Act, in section 15,—

- (a) after the words "after-acquired", wherever occurring, the words "and future" shall be inserted; and
- (b) after the word "goods" wherever occurring, the words "and products" shall be inserted.

11. **Amendment of section 18, Act XXXI of 2016.**—In the said Act, in section 18, in sub-section (2), for the expression "Companies Ordinance, 1984 (XLVII of 1984)", the expression "Companies Act, 2017 (XIX of 2017)" shall be substituted.

12. **Amendments of section 19, Act XXXI of 2016.**—In the said Act, in section 19,—

- (a) in sub-section (2), for the words "Federal Government" the word "Commission" shall be substituted;
- (b) for sub-section (3), the following shall be substituted, namely:—

"(3) The head office of the Registry shall be at such place as the Commission may specify and, if considered necessary, the Registry may establish branch offices of the Registry at such other places as the Commission deems fit for the purposes of facilitating registration of security interests created by an entity and to perform any or all of the functions of the Registry, as may be determined by the Commission.";
- (c) in sub-section (4), for the words "Federal Government" the word "Commission" shall be substituted; and
- (d) in sub-section (5), after the word "seal" the words "as approved by the Commission" shall be inserted.

13. **Amendment of section 20, Act XXXI of 2016.**—In the said Act, for section 20, the following shall be substituted, namely:—

- “20. Appointment of registrar, deputy registrars and other officers.—(1) The Commission may empower or appoint any officer of the Commission as the head of the Registry for the purposes of managing and controlling the register set up pursuant to section 21 and such other functions as may be determined by the Commission.**
- (2) The Commission may also appoint deputy registrars for each branch office of the Registry to perform, under the direction of the registrar, such functions, duties and powers of the registrar under this Act as may be notified by the Commission.
- (3) The Commission may appoint such other officers with such designations as it may think fit for the purposes of this Act, to perform under the direction of the registrar, such functions, duties and powers under this Act as may be determined by the Commission.”.

14. Amendments of section 21, Act XXXI of 2016.—In the said Act, in section 21,—

- (a) in sub-section (1), the words “at the head office of the Registry” shall be omitted; and
- (b) in sub-section (3), clause (b) shall be omitted; and
- (c) in sub-section (4),—
- (i) for the word “registrar” the word “Commission” shall be substituted; and
- (ii) for the word “prescribe” the word “specify” shall be substituted.

15. Amendments of section 22, Act XXXI of 2016.—In the said Act, in section 22, in sub-section (2),—

- (a) clause (a) shall be omitted;
- (b) after clause (b), the following new clause shall be inserted, namely:—
- “(ba) in the case of any other entity, as may be specified; and
- (d) for clause (c), the following shall be substituted, namely:—

- “(c) the vehicle registration number in case of a motor vehicle for which the vehicle registration number is given in the financing statement; and”.

16. **Amendments of section 23, Act XXXI of 2016.**—In the said Act, in section 23,—

(a) in sub-section (2),—

(i) the words “be in such form as may be prescribed by rules and” shall be omitted; and

(ii) for clause (f), the following shall be substituted, namely:—

“(f) term of the registration up to a maximum of five years;”;

(iii) for clause (g), the following shall be substituted, namely:—

“(g) maximum amount secured by the security interest unless the financing statement relates to an absolute transfer of receivables; and;

(iv) for clause (h), the following shall be substituted, namely: -

“(h) description of the collateral and its proceeds, where applicable:

Provided that a description of collateral is sufficient if it reasonably allows its identification. A description of collateral that is a motor vehicle may, but need not, include its vehicle registration number.”; and

(v) clause (i) shall be omitted.

(b) for sub-section (3), the following shall be substituted, namely:—

“(3) A financing statement may be filed before a security agreement is entered into and a financing statement may perfect security interests created by more than one security agreements.”; and

(c) after sub-section (3), substituted as aforesaid, the following new sub-section shall be added, namely:—

“(4) A financing statement is only effective if it has been authorized in writing by the entity and an entity shall be deemed to have authorized the registration of a financing statement that describes collateral if the entity enters into a security agreement that covers that collateral.”.

17. **Amendments of section 24, Act XXXI of 2016.**—In the said Act, in section 24, —

(a) in sub-section (1), in clause (i), the word “or”, at the end, shall be omitted and thereafter the following new clause shall be inserted, namely:—

“(ia) extension of the term of the registration, in accordance with sub-section (2A); or”;

(b) in sub-section (2), the words “be in such form as may be prescribed by rules and” shall be omitted;

(c) after sub-section (2), amended as aforesaid, the following new sub-section shall be inserted, namely:—

“(2A) The term of a registration may for a maximum period of five years from its expiry be extended at any time within six months before the then-current expiry date by filing a modification statement to that effect. The term of a registration may be extended in this way more than once.”.

18. **Omission of section 25, Act XXXI of 2016.**—In the said Act, section 25 shall be omitted.

19. **Amendment of section 26, Act XXXI of 2016.**—In the said Act, in section 26, in sub-section (2), the words “be in such form as may be prescribed by rules and” shall be omitted.

20. **Amendment of section 28, Act XXXI of 2016.**—In the said Act, in section 28, for the marginal heading “Rejection of filing” the marginal heading “Incomplete filings” shall be substituted.

21. **Amendment of section 30, Act XXXI of 2016.**—In the said Act, in section 30,—

(a) in sub-section (1),—

(i) for clause (a), the following shall be substituted, namely:—

“(a) particulars of an entity under clause (a) (for entities other than natural persons) or (d) (for natural persons) of sub-section (2) of section 23 are stated incorrectly such that a search of the register using the correct particulars would not retrieve the registered financing statement;”;

(ii) in clause (b),—

(I) the words “such that a search of the register would not reveal the same collateral,” shall be omitted; and

(II) after the semicolon at the end, the word “or” shall be inserted;

(iii) clause (c) shall be omitted; and

(iv) for clause (d), the following shall be substituted, namely:—

“(d) the entity has not authorized the filing of a financing statement.”; and

(b) in sub-section (2),—

(i) for the expression “clause (e) or (g) as required”, the expression “clause (e) for entities other than natural persons or (g) for natural persons” shall be substituted;

(ii) the words “by the entity” shall be omitted.

22. Amendments of section 31, Act XXXI of 2016.—In the said Act, in section 31, in sub-section (1),—

(a) in clause (a),—

(i) in sub-clause (i), for the word “the” occurring for the second time the word “a” shall be substituted; and

(ii) in sub-clause (iv), for the word “a”, the word “the” shall be substituted; and

(b) in clause (b), in sub-clause (ii), the expression “as required under sub-section (3) of section 23” shall be omitted.

23. Amendment of section 32, Act XXXI of 2016.—In the said Act, in section 32, for sub-section (1), the following shall be substituted, namely:—

“(1) A registered financing statement and any modification statements in relation thereto shall be removed from the register, if,—

- (a) the term of the registration has expired without being extended under sub-section (2A) of section 24; or
- (b) a termination statement has been filed in the register in respect of such registered financing statement.”

24. **Amendment of section 33, Act XXXI of 2016.**—In the said Act, in section 33,—

(a) in sub-section (2),—

- (i) clause (a) shall be omitted;
- (ii) after clause (b), the following new clause shall be inserted, namely:—

“(ba) in case of any other entity, against the name of the entity, as may be prescribed;” and

(iii) in clause (e), for the word “prescribed” the word “specified” shall be substituted.

(b) in sub-section (3), for the words “prescribed by rules” the word “specified” shall be substituted.

25. **Amendment of section 34, Act XXXI of 2016.**—In the said Act, in section 34, for the expression “Federal Government” the word “Commission” shall be substituted.

26. **Amendment of section 38, Act XXXI of 2016.**—In the said Act, in section 38,—

- (a) after the words “after-acquired”, occurring twice the words “and future” shall be inserted; and
- (b) after the word “present” the word “property” shall be inserted.

27. **Amendment of section 39, Act XXXI of 2016.**—In the said Act, in section 39, for sub-section (1), the following shall be substituted, namely:—

“(1) If a financing statement or Form 10 is required to state a maximum amount secured, then the priority of a security interest that is

perfected by that financing statement or Form 10 is limited to the maximum amount as stated in the registered financing statement or Form 10, as applicable.”.

28. **Amendment of section 42, Act XXXI of 2016.**—In the said Act, in section 42,—

(a) for the marginal heading “**Priority of security interest based on retention of title arrangement**” the marginal heading “**Priority of acquisition security interest**” shall be substituted;

(b) for sub-section (1), the following shall be substituted, namely:—

“(1) An acquisition security interest in collateral that is perfected by registration as provided under this Act within ten days of the date on which the customer takes possession of the collateral shall have priority over all other competing security interests in the same collateral irrespective of the time of perfection of such competing security interests.”;

(c) sub-section (2) shall be omitted; and

(d) in the Illustrations, in the first paragraph, for the words “**hypothecation on all present an**” the words “**a security interest over all present and**” shall be substituted.

29. **Amendment of section 46, Act XXXI of 2016.**—In the said Act, in section 46,—

(a) in sub-section (1), the expression “**pursuant to sub-section (3) of section 14**” shall be omitted; and

(b) after sub-section (3), in the Illustrations,—

(i) in clause (a), in the second paragraph, for the word “**hypothecation**” the words “**security interest**” shall be substituted; and

(ii) in clause (b), for the words “**floating charge**” wherever occurring, the words “**security interest**” shall be substituted.

30. **Amendment of section 47, Act XXXI of 2016.**—In the said Act, after section 47, in the *Illustration* in the second paragraph, for the word “**hypothecation**” the words “**security interest**” shall be substituted.

31. **Omission of section 48, Act XXXI of 2016.**—In the said Act, section 48 shall be omitted.

32. **Amendment of section 49, Act XXXI of 2016.**—In the said Act, in section 49, —

- (a) in sub-section (1), the expression “pursuant to sub-section (3) of section 14” shall be omitted;
- (b) after sub-section, in the *Illustration* —
 - (i) in clause (a), in the second paragraph, for the word “hypothecation”, the words “security interest” shall be substituted; and
 - (ii) in clause (b), in the fourth paragraph, for the words “floating charge” wherever occurring, the words “security interest” shall be substituted.

33. **Amendment of section 50, Act XXXI of 2016.**—In the said Act, in section 50,—

- (a) after sub-section (1), the following new sub-section shall be inserted, namely:—

“(1A) A purchaser for value of a motor vehicle shall acquire the motor vehicle free of a security interest if the security interest is perfected by registration and the registration does not include the correct vehicle registration number.”; and

- (b) in sub-section (2), after the expression “sub-section (1)” the expression “or under sub-section (1A)” shall be inserted.

34. **Insertion of section 52A, Act XXXI of 2016.**—In the said Act, after section 52, the following new section shall be inserted, namely:—

“52A **Transferee of money.**—A person that obtains possession of money that is subject to a security interest acquires its rights in the money free of the security interest, unless the person had actual knowledge that its obtaining the money is prohibited under the security agreement.”.

35. **Amendment of section 53, Act XXXI of 2016.**—In the said Act, in section 53, —

(a) for sub-section (1), the following shall be substituted, namely:—

“(1) This Act shall apply to an assignment of receivables as a security interest, whereby—

(a) a customer may assign its rights, title, interests and benefits in receivables to a secured creditor in accordance with Part II of this Act;

(b) the secured creditor may perfect the security interest created by the assignment,—

(i) if the customer is an entity, in accordance with Part III of this Act; or

(ii) if the customer is a company, in accordance with the Companies Act, 2017 (XIX of 2017).

(c) the priority of the secured creditor’s interest in the receivables shall be determined in accordance with Part V of this Act; and

(d) the secured creditor must enforce its security interest, unless it is an absolute assignment of a receivable, in accordance with Part VII of this Act.”;

(b) sub-section (2) shall be omitted;

(c) in sub-section (3),—

(i) for the expressions “Upon an assignment of receivables under sub-section (1)” the expression “Subject to this Act, upon an assignment of receivables” shall be substituted;

(ii) in clause (a),—

(I) for the word “assignor” the word “customer” shall be substituted; and

(II) for the word “assignee” the words “secured creditor” shall be substituted.

(iii) in clause (b),—

- (I) for the word "assignee" the words "secured creditor" shall be substituted;
- (II) for the word "his" the word "its" shall be substituted; and
- (III) for the word "assignor's" the word "customer's" shall be substituted.

(d) sub-section (4) shall be omitted;

(e) for sub-section (5), the following shall be substituted, namely:—

"(5) If receivables subject to a security interest are secured by movable property, then, unless otherwise agreed between the customer and the secured creditor, the secured creditor shall automatically benefit from that security without the need for any new act of transfer.";

(f) for sub-section (6), the following shall be substituted, namely:—

"(6) The rights of a secured creditor in respect of the receivables that are subject to a security interest are subject to—

- (a) all defences and right to set-off arising from the original contract between the account debtor and the customer that the account debtor could have asserted against the customer:

Provided that the secured creditor shall, unless otherwise agreed with the customer, be entitled to recover from the customer, any loss suffered by it as a result of the account debtor exercising any such defences and right to set-off; and

- (b) any rights to set-off that the account debtor could have asserted against the customer in respect of claims against the customer accruing before the account debtor received notice in writing of the security interest;"; and

(g) in sub-section (7), for the word "assignor" the word "customer" shall be substituted.

36. **Omission of section 54, Act XXXI of 2016.**—In the said Act, section 54 shall be omitted.

37. **Substitution of section 55, Act XXXI of 2016.**—In the said Act, for section 55, the following shall be substituted, namely:-

“55. Protections for the account debtor.—(1) Subject to sub-section (4), an account debtor shall be bound by a security interest over the receivables and have a duty to make payment to the secured creditor where the account debtor receives notice of security interest in writing.

(2) The notice to be given under sub-section (1) to the account debtor may be given by the customer or secured creditor and shall at the minimum—

(a) state name and address of the customer;

(b) state name and address of the secured creditor;

(c) identify the receivables; and

(d) require the account debtor to pay to the secured creditor in accordance with payment instructions stated therein.

(3) If notice has not been given to an account debtor under sub-section (1), of a security interest in receivables, he shall be entitled to make payments to the customer in respect of the receivables in accordance with the original contract between the account debtor and the customer and such payment shall fully discharge the account debtor:

Provided that payment made to the customer in respect of such receivables shall be held in trust for the benefit of the secured creditor and the customer shall forthwith make payment of such amount to the secured creditor or its agent duly authorised in this behalf, unless otherwise agreed between the customer and secured creditor.

(4) If an account debtor receives notices under sub-section (1) in relation to more than one security interest created by the same customer, it is discharged by paying in accordance with the first notice received. If an account debtor receives more than one notice under sub-section (1) in relation to security interests created in favour of a secured creditor by the initial or any other secured creditor, it is discharged by paying in accordance with the last notice.”.

38. **Insertion of section 55A, Act XXXI of 2016.**—In the said Act, after section 55, substituted as aforesaid, the following new section shall be inserted, namely:—

“55A Contractual limitations on security interests in receivables.—(1) A security interest in receivables shall be effective notwithstanding any agreement between the initial or any subsequent assignor and the account debtor or any secured creditor limiting in any way the assignor’s right to create a security right.

(2) Nothing in this section affects any obligation or liability of the customer for breach of the agreement referred to in sub-section (1), but the other party to the agreement may not avoid the contract giving rise to the receivable or the security agreement on the sole ground of the breach of the agreement, or raise against the secured creditor any claim it may have as a result of such a breach against the customer. A person that is not a party to the agreement referred to in sub-section (1) is not liable for the customer’s breach of the agreement on the sole ground that it had knowledge of the agreement.

(3) This section shall apply only to receivables—

(a) arising from a contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of immovable property;

(b) arising from a contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) representing the payment obligation for a credit card transaction; or

(d) arising upon net settlement of payments due pursuant to a netting agreement involving more than two parties.”.

39. **Insertion of sections 56A and 56B, Act XXXI of 2016.**—In the said Act, after section 56, the following new sections shall be inserted, namely:—

“56A. Applicable law.—The law applicable to the creation, perfection and priority of a security interest granted by a customer in a receivable and any other intangible property shall be the law of the jurisdiction in which the customer is located.

56B. **Part does not apply to absolute assignments of receivables.**— This Part does not apply to an absolute assignment of receivables and nothing in this Act shall prejudice a secured creditor's right to enforce an absolute assignment of receivables without the intervention of the courts.”

40. **Amendments of section 59, Act XXXI of 2016.**—In the said Act, in section 59,—

(a) in sub-section (1), for clause (a), the following shall be substituted, namely:—

“(a) a security interest that is perfected by possession;”;

(b) in sub-section (2), for the word “pledge” the expression “security interest referred to in sub-section (1)” shall be substituted.

41. **Amendments of section 61, Act XXXI of 2016.**—In the said Act, in section 61,—

(a) for the expression “Companies Ordinance, 1984 (XLVII of 1984)” wherever occurring, the expression “Companies Act, 2017 (XIX of 2017)” shall be substituted; and

(b) for the words “pledge of the words “security interest over” shall be substituted.

42. **Amendments of section 63, Act XXXI of 2016.**—In the said Act, in section 63,—

(a) in the marginal heading, for the word “pledge” the words “possessory security interest” shall be substituted; and

(b) in the text of the section, for the words “pledge or a security interest in collateral covered by a title document” the expression “security interest that is perfected by possession of the collateral or, in the case of collateral covered by a title document, by possession of the title document” shall be substituted.

43. **insertion of section 65A, Act XXXI of 2016.**— In the said Act, after section 65, the following new section shall be inserted, namely:—

“65A. **Security interests take precedence.**—Subject to this Act and notwithstanding any other law for the time being in force, a perfected security interest takes absolute precedence over all other claims, including those of the Government.”

44. **Substitution of section 66, Act XXXI of 2016.**—In the said Act, for section 66, the following shall be substituted, namely:—

- “66. **Provisions of insolvency laws.**—Subject to section 65A, if a customer becomes insolvent, the same rules shall prevail and be observed with regard to the priority of debts upon the distribution of the insolvent customer’s estate, the respective rights of the secured and unsecured creditors and to debts provable as are in force for the time being under the applicable insolvency laws.”
45. **Amendment of section 68, Act XXXI of 2016.**—In the said Act, in section 68, for the expression “Companies Ordinance, 1984 (XLVII of 1984)” the expression “Companies Act, 2017 (XIX of 2017)” shall be substituted.
46. **Amendment of section 70, Act XXXI of 2016.**—In the said Act, in section 70, sub-section (2) shall be omitted.
47. **Substitution of section 72, Act XXXI of 2016.**— In the said Act for section 72 the following shall be substituted, namely:—
- “72. **Power to make regulations.**—The Commission may, by notification in the ~~Official~~ Gazette, make regulations, not inconsistent with the provisions of this Act and the rules made thereunder for carrying out the purposes of this Act.”
48. **Amendment of section 73, Act XXXI of 2016.**—In the said, in section 73, in sub-section (1), in clause (c),—
- (a) for the word “establishment” the words “operationalization” shall be substituted; and
 - (b) for the expression “Federal Government in terms of sub-section (1)” the expression “Commission in terms of sub-section (2)” shall be substituted.
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STATEMENT OF OBJECTS AND REASONS

DRAFT BILL TO AMEND THE FINANCIAL INSTITUTIONS (SECURED TRANSACTIONS) ACT, 2016

The functions of the Secured Transactions Registry for unincorporated entities, established under the Act were outsourced to the Securities and Exchange Commission of Pakistan (SECP) in March 2019 as it was already maintaining a similar registry for companies. The SECP has made the registry operational w.e.f. April 30. For smooth functioning of the registry and ^{to} avoid any unnecessary administrative issues it is imperative that the administrative powers of the Federal Government under the Act may be assigned to the SECP.

3. The provisions of the Act with respect to types of movable assets, security interests and obligations covered under the Act and key features of the Secured Transactions Registry also need to be aligned with best practice of secured transactions laws and modern collateral registries. Moreover, the existing law does not provide absolute priority to secured creditors in case the borrower defaults which is considered a best practice for promotion of secured lending activity as such absolute priority improves recovery rate and lowers the risk of secured creditors.

4. The Draft Bill, inter alia, will bring the existing legal framework in line with international best practices for secured transactions laws besides ensuring efficient functioning of the Secured Transactions Registry established under the Act.

5. The Draft Bill, is in line with Government's objective to promote access to finance for small businesses and improve global rankings in order to create positive image of the country internationally.

6. The Bill is designed to achieve the aforesaid purpose

Dr. Abdul Hafeez Shaikh
Advisor to PM on Finance &
Revenue