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Moveable and Immovable Property Act of the
Kingdom of Bhutan, 1999

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MOVEABLE AND IMMOVABLE PROPERTY ACT OF THE KINGDOM OF BHUTAN

(An Act relating to loans, mortgages and other security interests in moveable and immovable property)

Be it enacted by the National Assembly of the Kingdom of Bhutan in the year 1999, corresponding with the Bhutanese Calendar year of the Female Earth Hare, as follows:-

PART I

GENERAL PROVISIONS

- 1 **Short Title:-** This Act may be cited as the Moveable and Immovable Property Act of the Kingdom of Bhutan 1999.
- 2 **Commencement, extent, and repeal:-** This Act shall come into force with effect from the 15th. day of 6th. month of Female Earth Hare Year of the Bhutanese Calendar corresponding to July 28, 1999. It shall extend to the whole Kingdom of Bhutan. Chapters 1,2,3 and 4 of the Law of Bhutan (NGA) Loan Act of 1981, are repealed by this Act.
- 3 **Definitions:-** In this Act, unless the context otherwise requires,
 - (a) **"collateral"** means moveable property that is subject to a security interest;
 - (b) **"debtor"** means a person who owes payment or other performance of the obligation secured, whether or not the person owns or has rights in the collateral, and includes,
 - (i) an assignor of an account, and
 - (ii) a person who receives the debtor's interest in the collateral following a transfer, or a successor to a debtor's interest in collateral;
 - (c) **"default"** means the failure to pay or otherwise perform the obligation secured when due, or the occurrence of any event following which the security becomes enforceable under the terms of the security agreement;
 - (d) **"document of title"** means any written document that purports to be issued by or addressed to a person who holds moveable property on behalf of another and purports to cover goods in the person's possession which are identified or which are fungible portions of an identified mass, and that in the ordinary course of business the document is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;

- (e) **"goods"** means tangible moveable property including fixtures, growing crops, the unborn young of animals, timber to be cut, and minerals and hydrocarbons to be extracted but does not include documents of title, instruments, money and securities;
- (f) **"instrument"** means,
 - (i) a bill, note, cheque, or any other writing that evidences a right to the payment of money and is of a type that, in the ordinary course of business, is transferred by delivery with any necessary endorsement or assignment, or
 - (ii) a letter of credit and an advice of credit if the letter or advice states that it must be surrendered upon claiming payment thereunder;but does not include a writing that constitutes part of a document of title or a security;
- (g) **"intangible"** means all moveable property that is not goods, documents of title, instruments, money or securities;
- (h) **"money"** means a medium of exchange authorized or adopted by the Royal Government as part of the currency of Bhutan or by a foreign government as part of its currency;
- (i) **"moveable property"** means documents of title, goods, instruments, intangibles, money and securities and includes fixtures and additions but does not include building materials that have been affixed to immovable property;
- (j) **"prescribed"** means prescribed by regulations;
- (k) **"proceeds"** means identifiable or traceable moveable property in any form which is derived directly or indirectly from any dealing with collateral or the proceeds of collateral, and includes any payment representing indemnity or compensation for loss of or damage to the collateral or proceeds of collateral;
- (l) **"purchase"** includes taking by sale, lease, negotiation, mortgage, pledge, lien, or any other consensual transaction creating an interest in personal property;
- (m) **"purchaser"** means a person who takes by purchase;
- (n) **"registration change statement"** means the information prescribed for a registration change statement in the prescribed form or format;
- (o) **"registration statement"** means the information prescribed for a registration statement in the prescribed form or format;

- (p) **"regulations"** means the regulations made under this Act;
- (q) **"secured party"** means a person who holds a security interest for the person's own benefit or for the benefit of any other person and for the purposes of Sections 32, 46 to 49, 54 and 55 includes a receiver;
- (r) **"security interest"** means an interest in moveable property that secures payment or performance of an obligation;
- (s) **"value"** means any consideration sufficient to support a simple contract and includes a pre-existing debt or liability.
- (t) **"lease"** means an agreement to occupy and use land, space, structure, or equipment for a definite term in consideration of a payment usually in the form of rent.

4 (1) Application to agreements :- Subject to section 5, this Act applies to,

- (a) every transaction that in substance creates a security interest. This application is without regard to the form of the transaction and without regard to the person who has title to the collateral and includes, without limiting the foregoing,
 - (i) a debenture, floating charge, pledge, hypothecation;
 - (ii) an assignment, lease or consignment that secures payment or performance of an obligation;
- (b) a transfer of an account even though the transfer may not secure payment or performance of an obligation;
- (c) every mortgage of immovable property; and
- (d) every loan agreement.

(2) Sale agreements: - A sale agreement does not establish a security interest unless expressly provided in the agreement.

(3) Previous agreements included: - Except as otherwise provided in this Act, this Act applies to every transaction that in substance creates a security interest or mortgage whether made before the coming into force of this Act or after, and such agreements continue to have force and effect and the perfection or continuation of the security interest represented by such agreement are governed by this Act.

(4) Failure to register agreement during transition: - Where a secured party fails to register a security interest or mortgage which existed prior to this Act within six months following the date on which this Act came into force, the security interest or mortgage created by the security agreement or mortgage agreement shall be lower in priority to the interest of any person without knowledge of the security interest or mortgage who has subsequently acquired rights in the collateral or immoveable property and has relied upon a search in the name of the transferee made in the central file of the registration system established under this Act

5 Non-application of the Act:- This Act does not apply to a lien given by statute or rule of law, except as provided in Subsection 26(1)(a)(i) or Section 39.

PART II

VALIDITY OF AGREEMENTS

6. **Effectiveness of Agreement:-** Except as otherwise provided by this or any other Act, a security, loan or mortgage agreement is effective according to its terms between the parties to it and against third parties.
7. **Delivery of copy of agreement:-** Where a security agreement, loan agreement or mortgage is in writing, the secured party shall deliver a copy of the agreement to the debtor within thirty days after the execution of the agreement, and, if the secured party fails to do so after a request by the debtor, the Court, on the application of the debtor, may order the delivery of such a copy to the debtor.
8. **Failure to describe some of the collateral:-** The failure to describe some of the collateral in a security agreement, or land in a mortgage agreement, does not affect the effectiveness of the security or mortgage agreement with respect to the collateral that is described.
9. **(1) Guarantor liable under agreement:-** Unless otherwise agreed in the guarantee agreement, a person who acts as a guarantor of a security, loan or mortgage agreement is liable for any obligations under such agreement. The guarantee may enforce its rights under the security, loan or mortgage agreement against the guarantor in the same manner and to the same extent as it may against the debtor or mortgagor.
(2) Guarantee need not exhaust its rights against debtor.- Unless otherwise agreed, upon default under a security, loan or mortgage agreement a secured party or mortgagee may, in its discretion, proceed against the primary obligor or against the guarantor and need not first proceed against the primary obligor.
10. **(1) Agreement with minor:-** No agreement in respect of a loan to or from a minor, or in respect of the sale, mortgage, lease or other disposition of the property of a minor is effective or enforceable, unless approval has been granted by the Court prior to the execution of such agreement.
(2) Offense:- A person entering into an agreement in respect of a loan to or from a minor, or in respect of the sale, mortgage, lease or other disposition or encumbrance of the property of a minor without the prior approval of the Court in accordance with Subsection (1) is guilty of an offence and subject to a fine not exceeding one half of the amount involved in the transaction.
(3) Definition of minor:- For the purposes of this Act, a minor shall be as defined in the laws for the time being in force.

- 11. (1) Loan under duress:-** A loan agreement is not effective or enforceable where such agreement is entered into under duress by one of the parties. A claim of duress must be made to the Court within fifteen days following the day on which the agreement was executed.
- (2) Amounts granted to be returned:-** Amounts received under a loan granted under duress shall be returned to the grantor of the loan. The extorter of such amounts shall be liable to a fine equal to the amount involved in the transaction.
- 12. Gambling debts unenforceable:-** No agreement in respect of a debt made in the course of gambling is effective or enforceable.
- 13. (1) Loans from non-Bhutanese:-** Immovable property may not be pledged as collateral for a loan from a non-Bhutanese person, unless prior to the execution of such loan or mortgage agreement approval has been granted by the Royal Government.
- (2) Offense:-** Where immovable property is pledged as collateral for a loan from a non-Bhutanese without the prior approval of the Royal Government in accordance with Subsection (1), the loan shall be repaid to the lender upon written notice from the Royal Government. If the borrower fails to do so within 90 days, the property so pledged shall be forfeited to the Royal Government which shall sell the property and apply the proceeds to the amounts outstanding under the loan.
- 14. (1) Pledge of religious articles not permitted:-** Prescribed religious articles may not be pledged as collateral for a loan.
- (2) Definition of prescribed religious articles:-** Prescribed religious articles shall be as prescribed by the Cultural Properties Division of the Royal Government.
- (3) Offense:-** Both parties entering into an agreement for the pledge of prescribed religious articles in respect of a loan are guilty of an offence and each will be subject to a fine not exceeding one half the amount involved in the transaction.
- (4) Forfeiture of pledged items:-** Prescribed religious articles pledged as collateral in contravention of Subsection (1) shall be forfeited to the Royal Government.
- 15. Agreements requiring Imprisonment:-** The provisions of any agreement in respect of a loan, sale, mortgage, lease or other disposition of immovable or movable property which stipulate that upon default, a person's property is to be subject to physical harm, or that a person is to be imprisoned is not effective or enforceable.
- 16. (1) Mortgage of immovable property belonging to Monastic Bodies not permitted:-** An agreement in respect of the mortgage or other encumbrance of immovable property belonging to monastic bodies is not effective or enforceable unless prior to the execution of such

agreement, approval has been granted by the Dratshang Lhentshog.

(2) Offense:- Both parties entering into an agreement in respect of the mortgage or other encumbrance of monastic property in contravention of Subsection (1) is guilty of an offence and each will be subject to a fine not exceeding one half of the amount involved in the transaction.

(3) Restoration of property:- Where immovable property belonging to a monastic body has been made subject to a mortgage or other encumbrance otherwise than in accordance with Subsection (1) it shall be restored to the registered owner of the property.

17. (1) Interest:- Except as otherwise provided by this Act, or any other Act of the Kingdom of Bhutan, any person may stipulate for, allow and exact, in any contract or agreement, any rate of interest or discount that is agreed upon by the parties to the transaction; provided, however, that no lender other than a registered financial institution which has been duly licenced to engage in the extension of credit, may charge interest greater than 15 percent per annum expressed as a simple annual rate.

(2) Definition of interest:- For purposes of this Act, interest shall mean the amount by which

(a) the total sum that the borrower is required to pay if the payments required are made as they become due, including all such sums regardless of the purpose or reason for the payment or the time of payment,

exceeds,

(b) the sum actually received in cash by the borrower (plus insurance fees or other costs prescribed by regulation, if any, actually paid by the lender.)

18. Where interest not stipulated.- Whenever no evidence is produced to the satisfaction of the court of the rate of interest being fixed, then no interest shall be chargeable or recoverable.

19. Interest to be stated clearly.- Whenever interest is, by the terms of any written agreement or written contract, made payable at a rate or percentage expressed per day, week, month, or at any rate or percentage for any period which is less than a year, the contract must also contain an express statement of the yearly rate to which the stated rate is equivalent. If the yearly rate is not stated, then the rate of interest will be the stated nominal rate for the period and no compounding will be permitted.

20. Excess recoverable.- If any sum is paid on account of any interest not chargeable, payable or recoverable under Sections 17, 18 or 19, the sum so paid may be recovered back or deducted from any principal or interest payable under the contract.

- 21. (1) Court judgments.-** Interest on an obligation under a loan, security or mortgage agreement continues to accrue at the rate specified in the agreement until such time as a judgment has been delivered and satisfied.
- (2) Judgment debt defined.-** For purposes of this Act, any sum, costs, charges or expenses made payable by or under any judgment, decree, rule or order of any Court whatever in any civil proceeding shall be deemed to be a judgment debt and subject to the same rate of interest as specified in the agreement upon which judgement was granted.
- 22. Application of principles of law and equity.-** Except in so far as they are inconsistent with the express provisions of this Act, the principles of Bhutanese Customary and Common law, including the law relating to capacity to contract, principal and agent, fraud, misrepresentation, duress, coercion, mistake and other validating or invalidating rules of law, shall supplement this Act and shall continue to apply.

PART III

ATTACHMENT, PERFECTION AND PRIORITIES OF SECURITY INTERESTS IN MOVEABLE PROPERTY

23. Application.- This Part applies only to security interests in moveable property and does not apply to the creation or assignment of an interest in immovable property, including a mortgage, charge or lease of immovable property, other than,

- (a) an interest in a fixture or addition, or
- (b) an assignment of a right to payment under a mortgage, charge or lease where the assignment does not convey or transfer the assignor's interest in the immovable property.

24. (1) Attachment of security interests required.- A security interest, though effective as between the parties to the agreement under Part II of this Act, is not enforceable against a third party unless it has attached.

(2) When a security interest attaches.- A security interest attaches when,

- (a) the secured party or a person on behalf of the secured party other than the debtor obtains possession of the collateral; or when the debtor signs a security agreement that contains a description of the collateral sufficient to enable it to be identified;
- (b) value is given; and
- (c) the debtor has rights in the collateral,

unless the parties have agreed to postpone the time for attachment, in which case the security interest attaches at the agreed time.

25. Future Advances.- A security agreement may secure advances of money, credit or other value to be made in the future.

26. Unperfected security.- Notwithstanding that a security interest has attached under Section 24, a security interest in collateral, which is not perfected,

- (a) has lower priority than the interest of a person,
 - (i) who has a perfected security interest in the same collateral, or who has priority or a lien given under any other Act or by a rule of law; or

- (ii) who assumes control of the collateral through execution of court order.
 - (b) is not effective against a person who represents the creditors of the debtor;
 - (c) in documents of title, securities, instruments or goods is not effective against a purchaser of the same who gives value and receives delivery without knowledge of the security interest, provided the purpose of the transfer is not solely for securing payment or performance of an obligation.
- 27. Perfection of security interest.-** A security interest is perfected when,
- (a) it has attached; and
 - (b) all steps required for perfection
 - (i) by registration under Section 29, or
 - (ii) by possession or repossession under Section 31, or
 - (iii) by the rules governing temporary perfection under Section 32, have been completed, regardless of the order of occurrence.
- 28. (1) Continuity.-** If a security interest is originally perfected in any way permitted under this Act and is again perfected in some other way permitted under this Act, the security interest shall be deemed to be perfected continuously for the purposes of this Act, provided that there was no period between the first and second perfection when the interest was unperfected.
- (2) Assignees.-** Where a security interest is assigned or transferred, the person who receives the security interest assumes the perfection status the transferor had at the time of the transfer.
- 29. Perfection by registration.-** Registration perfects a security interest in any type of collateral.
- 30. Filing of registration statement.-** In order to perfect a security interest by registration under this Act, a registration statement shall be registered in accordance with the provisions of this Act and the regulations.
- 31. Perfection by repossession.-** Possession or repossession of the collateral by the secured party, or on the secured party's behalf by a person other than the debtor perfects a security interest in,
- (a) goods;

- (b) instruments;
- (c) securities;
- (d) negotiable documents of title; and
- (e) money

but only while it is actually held as collateral.

32. (1) Temporary perfection.- Where a person takes a security interest in an instrument, security or negotiable document of title, and the security interest is documented in a written security agreement, then such security interest shall be deemed to be perfected for the first ten days after the agreement is signed.

(2) Temporary perfection of other moveables.- A security interest perfected by possession in moveable property that a secured party delivers to the debtor remains perfected for the first ten days after the collateral comes under the control of the debtor, provided the property is delivered for,

- (a) ultimate sale or exchange,
- (b) presentation, collection or renewal,
- (c) registration of transfer,
- (d) loading, unloading, storing, shipping or transshipping, or
- (e) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange.

(3) After ten days the rules in the Act apply.- Beyond the period of ten days referred to in Subsection (1) or (2), a security interest under this section becomes subject to the provisions of this Act for perfecting a security interest.

33. (1) Care of collateral.- Where a secured party has perfected his security interest in moveable property by possession or repossession, the secured party shall use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Rights and duties of secured party.- Unless otherwise agreed, where collateral is in the secured party's possession,

- (a) reasonable expenses, including the cost of insurance and payment of taxes and other charges incurred in obtaining and maintaining possession of the collateral and in its preservation, are chargeable to the debtor and are secured by the collateral;
- (b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;
- (c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the obligation secured; and
- (d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled mixed with like fungibles.

(3) Definition of fungible.- For the purposes of Subsection 2(d) fungible goods and fungible securities are goods or securities, as the case may be, of which any unit is, by nature or business practice, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement.

(4) Liability for loss.- A secured party is liable for any loss or damage caused by his failure to meet any obligations imposed by Subsection (1) or (2), but does not lose the security interest in the collateral.

(5) Use of collateral.- A secured party may use the collateral,

- (a) in the manner and to the extent provided in the security agreement;
- (b) for the purpose of preserving the collateral or its value; or
- (c) pursuant to an order of the Court upon application by the secured party.

(6) Inventory to be taken at time of possession.- At the time a secured party takes possession of collateral, a list or itemized inventory of all property and its condition must be prepared by the secured party and signed by both parties. Failure to sign leads to a rebuttable presumption that the inventory is accurate.

34. (1) Statement of accounts.- A debtor, or a person who has an interest in the collateral or who is the authorized representative of such a person, may require by a written notice, that the secured party to furnish to the person at the address specified in the notice, the following:

- (a) a statement in writing setting out, or approving or correcting the amount of the indebtedness, and the terms of payment as of the date specified in the notice; or

- (b) a statement in writing, approving or correcting as of the date specified in the notice, a statement of the collateral or a part of the collateral as specified in a list attached to the notice; or
- (c) a true copy of the security agreement.

(2) Inspection of security.- The secured party, on the request of a person entitled to receive a true copy of the security agreement under Subsection 1(c), the secured party must permit the person, or the person's authorized representative to inspect the security agreement or a true copy of the agreement during normal business hours.

35. Perfecting as to proceeds.-

(1) Where collateral gives rise to proceeds, the security interest also covers the proceeds.

(2) Where the security interest was perfected by registration when the proceeds arose, the security interest in the proceeds remains continuously perfected so long as the registration remains effective.

(3) Where the security interest is perfected with respect to the proceeds by any other method permitted under this Act, the security interest in the proceeds remains perfected so long as the conditions of such perfection are satisfied.

36. Transaction in ordinary course of business - Goods.- A person who buys goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest in the goods given by the seller to another person, even though the security interest of the other person is perfected, unless the buyer also knew that the sale constituted a breach of the security agreement.

37. Purchasers of instruments.- A purchaser of collateral that is an instrument, negotiable document of title, or a security, has priority over any security interest in the collateral perfected by registration or temporarily perfected under Section 32 if the purchaser,

- (a) gave value for the interest purchased;
- (b) purchased the instrument or negotiable document of title without knowledge that it was subject to a security interest; and
- (c) has taken possession of the instrument or negotiable document of title.

38. (1) Priorities, general rules.- If no other provision of this Act is applicable, the following priority rules apply where more than one security interest exists in the same collateral:

- (a) Where priority is to be determined between security interests perfected by registration, priority shall be determined by the order of registration regardless of the order of perfection.
 - (b) Where priority is to be determined between a security interest perfected by registration and a security interest perfected otherwise than by registration, the security interest which was first perfected has priority over the other security interest.
- (2) First method of perfection continues.-** For the purpose of Subsection (1), a continuously perfected security interest shall be treated at all times as if perfected by the method in which it was first perfected.
- (3) Future advances.-** Where subsequent advances of money, credit or other value are made while a security interest is perfected, the security interest has the same priority with respect to each subsequent advance as it has with respect to the first advance.
- 39. Liens for materials.-** Where a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to a security interest, any lien that the person has in respect of the materials or services has priority over a perfected security interest.
- 40. (1) Crops.-** Where a creditor provides funds to a debtor to enable the debtor to produce crops, and the creditor has perfected its security interest in the crops or the proceeds from their disposition, then the security interest has priority over other security interests which the debtor may have granted in the same crops.
- (2) Idem.-** Where more than one perfected security interest is given priority by Subsection (1), each ranks equally according to the ratio that the amount advanced with respect to each bears to the total amount advanced.
- 41. (1) Fixtures and additions, removal.-** If a secured party has an interest in a fixture or goods that are installed or affixed to other goods and that interest has priority over the claim of any person having an interest in the immovable or moveable property to which the goods are attached, the secured party may remove the fixture or the installed or affixed goods if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the whole property who is not the debtor for the cost of repairing any physical injury caused by their removal. The right to remove fixtures and additions may only be exercised on default and remains subject to the provisions of this Act respecting default.
- (2) Security.-** A person entitled to reimbursement under Subsection (1) may refuse permission to remove the fixtures or additions until the secured party has given adequate security for the reimbursement.

(3) Retention of collateral.- A person having an interest in the whole property, and whose interest is lower in priority to another security interest in the fixtures or additions, may retain the fixtures or additions if, before the fixtures and additions have been removed by the secured party, the person pays to the secured party the amount owing in respect of the security interest in the fixtures and additions.

42. Subordination.- A secured party may, in the security agreement or otherwise, subordinate its security interest to any other security interest and such subordination is effective according to its terms.

43 Debtor may transfer.- The rights of a debtor in collateral may be transferred but such a transfer does not prejudice the rights of the secured party under the security agreement or otherwise.

PART IV

DEFAULT - RIGHTS AND REMEDIES IN RESPECT OF MOVABLE PROPERTY

44. **Application.-** This Part applies only to security interests in moveable property.
45. **Rights and remedies cumulative.-** The rights and remedies mentioned in this Part are cumulative.
46. **(1) Rights and remedies of secured party.-** Where the debtor is in default under a security agreement, the secured party has the rights and remedies provided in the security agreement and the rights and remedies provided in this Part. When in possession of the collateral, the rights, remedies and duties provided in Section 33.
- (2) Enforcement by secured party.-** The secured party may enforce a security interest by any manner allowed in this Part, or by any other method permitted by law including by way of Court order. If the collateral is or includes documents of title, the secured party may proceed either as to the documents of title or as to the goods to which they apply, and any method of enforcement that is permitted with respect to the documents of title is also permitted, with necessary modifications, with respect to the goods covered by the documents of title.
- (3) Rights and remedies of a debtor.-** Where the debtor is in default under a security agreement, the debtor has the rights and remedies provided in the security agreement and the rights and remedies provided in this Part and in Section 33.
- (4) Non-waiver of rights and duties.-** Despite Subsection (1), the provisions of Section 33 and Sections 51 to 54, to the extent that they give rights to the debtor and impose duties upon the secured party, shall not be waived or varied except as provided by this Act.
- (5) Where agreement covers both moveable and immovable property.-** Where a security agreement covers both immovable and moveable property, the secured party may proceed under this Part as to the moveable property, or may proceed as to both the immovable and the moveable property in accordance with the secured party's rights, remedies and duties in respect of the immovable property, with all necessary modifications, as if the moveable property were immovable property, in which case this Part does not apply.
- (6) Judgment does not terminate security interest.-** A security agreement is not terminated merely because the claim has been reduced to judgement by the secured party or because the secured party has levied execution under such judgment on the collateral.

47. (1) Appointment of receivers permitted.-

- (a) The parties to a security agreement may provide that the secured party may appoint a receiver and, except as provided by this Act, determining the rights and duties of the receiver by agreement; or
- (b) A court of competent jurisdiction may appoint a receiver and determine the rights and duties of the receiver by order.

(2) Application to court.- Upon application of the secured party, debtor or any other person with an interest in the collateral, and after notice to any other person that the Court directs, the Court may,

- (a) remove, replace or discharge the receiver or receiver and manager;
- (b) give directions on any matter relating to the duties of the receiver;
- (c) approve the accounts and fix the remuneration of the receiver;
- (d) make any order with respect to the receiver that it thinks fit in the exercise of its general jurisdiction over a receiver.

48. Collection rights of secured party.- Where so agreed and in any event upon default under a security agreement, a secured party is entitled,

- (a) to notify any person obligated on an account or on an instrument to make payment to the secured party whether or not the assignor was previously making collections on the collateral prior to such notice; and
- (b) to take control of any proceeds to which the secured party is entitled under Section 35.

49. (1) Possession upon default.- Upon default under a security agreement,

- (a) the secured party has, unless otherwise agreed, the right to take possession of the collateral without first obtaining a Court order, provided the taking of possession does not involve violent confrontation or breach of the peace;
- (b) if the collateral is equipment and the security interest has been perfected by registration, the secured party may in a reasonable manner, render such equipment unusable without removal of the equipment from the debtor's premises, and upon rendering the equipment unusable the secured party shall be deemed to have taken possession of such equipment; and
- (c) the secured party may dispose the collateral on the debtor's premises in accordance

with Section 51.

(2) Definition of equipment.- For purposes of this Section equipment means goods that are not inventory, or goods that are not used or acquired for use primarily for personal, family or household purposes.

50. (1) Court orders.- Where a secured party is unable to collect payments under Section 48, obtain possession under Section 49, or to enforce any other rights provided in the security agreement or this Part for any reason whatsoever, then upon application of the secured party to the Court and upon the secured party establishing that there has been a default under the security agreement which default entitles the secured party to the rights and remedies provided in the security agreement or this Part, then the Court shall issue an order enabling the secured party to proceed with respect to the moveable property in accordance with the secured party's rights, remedies and duties.

50. (2) Police required to enforce court orders.- Upon presentation, the Royal Bhutan Police must enforce orders of the Court under this Act.

51. (1) Disposal of collateral.- Upon default under a security agreement, the secured party may dispose off any of the collateral in its condition either before or after any commercially reasonable repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to,

- (a) the reasonable expenses of the secured party, including the cost of insurance and payment of taxes and other charges incurred in retaking, holding, repairing, processing and preparing for disposition and disposing of the collateral and, to the extent provided for in the security agreement, any other reasonable expenses incurred by the secured party; and
- (b) the satisfaction of the obligation secured by the security interest of the party making the disposition,

and the surplus, if any, shall be dealt with in accordance with Section 52.

(2) Methods of disposition.- Collateral may be disposed of in whole or in part, and any such disposition may be by public sale, private sale, lease or otherwise and, subject to Subsection (4), may be made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable.

(3) Secured party's right to delay disposition.- The secured party may delay disposition of all or part of the collateral for such period of time as is commercially reasonable.

(4) Notice required.- Subject to Subsection (6), the secured party shall give not less than

thirty days notice in writing of the matters described in Subsection (5) to,

- (a) the debtor who owes payment or performance of the obligation secured;
- (b) every person who is known by the secured party, before the date that the notice is served on the debtor, to be an owner of the collateral or a person who may owe payment or performance of the obligation secured;
- (c) every person with a security interest in the collateral who has delivered a written notice to the secured party of their interest in the collateral before the date that the notice is served on the debtor.
- (d) every person with an interest in the collateral who has delivered a written notice to the secured party of their interest in the collateral before the date that the notice is served on the debtor.

(5) Contents of Notice.- The notice mentioned in Subsection (4) shall set out,

- (a) a brief description of the collateral;
- (b) the amount required to satisfy the obligation secured by the security interest;
- (c) the amount of the applicable expenses referred to in Subsection (1) (a) or, in a case where the amount of such expenses has not been determined, a reasonable estimate of such expenses;
- (d) a statement that upon payment of the amounts due under Subsection 1 (b) and (c), any person entitled to receive notice may redeem the collateral;
- (e) a statement that unless the amounts due are paid the collateral will be disposed off and the debtor may be liable for any deficiency; and
- (f) the date, time and place of any public sale, or the date after which any private disposition of the collateral is to be made.

(6) Manner of giving notice, general rules.- A notice under this section shall be given by personal service or by registered mail addressed to the person to whom it is to be given at the person's usual or last known place of address, or the address that is shown on the registered instrument under which the person acquired an interest in the property.

(7) When notice by mail effective.- A notice under this section shall, if given by registered mail, be mailed in Bhutan and such notice shall be deemed to have been given on the fifteenth day following the day on which it was mailed.

(8) Notice not required.- The notice mentioned in Subsection (4) is not required where,

- (a) the collateral is perishable;
- (b) the secured party believes on reasonable grounds that the collateral will decline rapidly in value;
- (c) the collateral is of a type customarily sold on a recognized market;
- (d) the cost of care and storage of the collateral is disproportionately large relative to its value;
- (e) for any reason not otherwise provided for in this subsection, the Court, on an application made without notice to any other person, is satisfied that a notice is not required;
- (f) after default, every person entitled to receive a notice of disposition under Subsection (4) consents in writing to the immediate disposition of the collateral; or
- (g) a receiver disposes off the collateral in the course of the debtor's business.

(9) Secured party's right to purchase collateral.- The secured party may buy the collateral, or any part of the collateral only at a public sale unless the Court, on application, orders otherwise, or the debtor otherwise agrees.

(10) Effect on disposition of collateral.- Where collateral is disposed off in accordance with this section, the disposition discharges the security interest of the secured party making the disposition and, if the disposition is made to a buyer who buys in good faith for value, discharges also any security interest of lower priority and terminates the debtor's interest in the collateral.

52. (1) Distribution of surplus.- Where the secured party has dealt with the collateral under Section 48, or has disposed of it, the secured party shall account for and, subject to Subsection (4), pay over any surplus consecutively as follows,

- (a) if no written claim of interest in proceeds is received by the secured party prior to disbursement, the secured party may pay proceeds over to the debtor;
- (b) if written claims of interest in the proceeds are received by the secured party prior to disbursement, the secured party may pay the proceeds into court and the surplus shall not be paid out except upon application under Section 55 by a person claiming entitlement thereto.

(2) Deficiency.- Unless otherwise agreed in the security agreement, or unless otherwise provided under this or any other Act, the debtor is liable for any deficiency.

53. (1) Acceptance of collateral.- After default, a secured party may propose to accept the collateral in satisfaction of the obligation secured. If the secured party decides to do so it must serve notice of the proposal on the persons mentioned in Subsection 51(4).

(2) Objection.- If any person whose interest in the collateral would be adversely affected by the secured party's proposal, and who is entitled to notification under Subsection (1) delivers to the secured party a written objection within thirty days after service of the notice, the secured party shall dispose of the collateral in accordance with Section 51.

(3) Proof of interest.- The secured party may require any person who has made an objection to the proposal to furnish proof of that person's interest in the collateral and, unless the person furnishes the proof within ten days after demand by the secured party, the secured party may proceed as if no objection had been made.

(4) Application to judge.- Upon application to the Court by the secured party, and after notice to every person who has made an objection to the proposal, the Court may order that an objection to the proposal of the secured party is ineffective because,

- (a) the person made the objection for a purpose other than the protection of the person's interest in the collateral or in the proceeds of a disposition of the collateral; or
- (b) the fair market value of the collateral is less than the total amount owing to the secured party and the estimated expenses recoverable under Subsection 51(1)(a).

(5) Foreclosure.- If no effective objection is made, the secured party is at the expiration of the thirty day period mentioned in Subsection (2), deemed to have irrevocably elected to accept the collateral in full satisfaction of the obligation secured. The secured party is entitled to the collateral free from all rights and interests in the collateral of any person entitled to notification under Subsection (1) whose interest is lower in priority to that of the secured party and who was served with such notice.

(6) Effect of disposition.- When a secured party disposes of the collateral after expiration of the period mentioned in Subsection (5) and the buyer

- (a) buys in good faith for value;
- (b) who takes possession of the collateral or, in the case of an intangible, receives assignment of it,

the buyer acquires the collateral free from any interest of the secured party and the debtor and free from every interest which is lower in priority to that of the secured party.

54. (1) Redemption of collateral.- At any time before the secured party has

- (a) disposed off the collateral or contracted for such disposition under Section 51 , or
- (b) before the secured party shall be deemed to have irrevocably elected to accept the collateral under Subsection 53 (5),

any person entitled to receive notice under Subsection 51(4) may, unless the person has otherwise agreed in writing after default, redeem the collateral by tendering fulfillment of all obligations secured by the collateral together with a sum equal to the reasonable expenses referred to in Section 51(1)(a) incurred by the secured party.

(2) Where more than one wishes to redeem.- Where more than one person elects to redeem under Subsection (1), the priority of their rights to redeem shall be the same as the priority of their respective interests in the collateral.

55. (1) Court orders and directions.- Upon application to the Court by the debtor, a creditor of the debtor, a secured party, a person who may owe payment or performance of the obligation secured, or any person who has an interest in collateral which may be affected by an order under Section 50 (1), the Court may,

- (a) make any order, including binding declarations of rights and injunctive relief, that is necessary to ensure compliance;
- (b) give directions to any party regarding the exercise of the party's rights or the discharge of the party's obligations;
- (c) make any order necessary to determine questions of priority or entitlement in, or to the collateral or its proceeds;
- (d) relieve any party from compliance with the requirements of the Act, but only on terms that are just for all parties concerned;
- (e) make any order necessary to ensure protection of the interests of any person in the collateral, but only on terms that are just for all parties concerned; and
- (f) make an order requiring a secured party to make good any default in connection with the secured party's custody, management or disposition of the collateral of the debtor, or to relieve the secured party from any default on such terms as the Court considers just, and to confirm any act of the secured party.

(2) Compensation for loss or damages.- Where a person fails to discharge any duties or obligations imposed upon the person by Part IV, Section 33 or Subsection 41(1) or (2), the person to whom the duty or obligation is owed has a right to recover compensation equal to

the actual loss or damage suffered because of the failure.

(3) Obligations under this Act cannot be waived.- Except as otherwise provided in this Act, any provisions in any security agreement which attempts to exclude any duty or obligation imposed under this Act, or to exclude or limit liability for failure to discharge duties or obligations imposed by this Act is void.

56. Extension or abridgement of time.- Where in this Act a time is prescribed within which, or before which any act or thing must be done, the Court, on an application without notice to any other person, may extend or abridge the time for compliance on terms that the Court considers just, but the Court may not extend or abridge times stipulated in Parts III, VI and in this Part.

PART V

MORTGAGES

57. Definitions.- In this Part,

- (a) **"conveyance"** includes assignment, lease, settlement and other assurance and covenant to surrender made by deed on a sale, mortgage, or settlement of any property or on any other dealing with or for any property, and "convey" has a corresponding meaning;
- (b) **"land"** includes houses and buildings, whether used as a dwelling or not, and also an undivided share in land;
- (c) **"mortgage"** means any charge on any immovable property for securing money or money's worth;
- (d) **"mortgage money"** means money or money's worth secured by a mortgage;
- (e) **"mortgagor"** includes any person deriving title under the original mortgagor or entitled to redeem a mortgage, according to the person's estate, interest or right in the mortgaged property; and
- (f) **"mortgagee"** includes any person deriving title under the original mortgagee.

58. Application of this Part.- This Part applies only to charges on immovable property, including land.

59. Right of mortgagor to inspect title deeds.- Despite any stipulation to the contrary, a mortgagor, prior to foreclosure or sale, is entitled on request, to inspect and make copies of or extracts from the documents relating to the mortgaged property in the custody or power of the mortgagee. The right to inspect and make copies or extracts must be exercised at reasonable times and at the expense of the mortgagor.

60. (1) Application of insurance.- A mortgagee may require that all money payable to a mortgagor on an insurance of the mortgaged property, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(2) Application of insurance to discharge the debt.- Without prejudice to any obligation to the contrary imposed by law or by agreement, a mortgagee may require that all money received on an insurance of the mortgaged property be applied in or towards the discharge of the money due under the mortgagee's mortgage.

61. Covenants to be implied.- Where one or more persons conveys by way of mortgage, each such person shall be deemed to covenant as set out in (a) to (f) below, and such covenants shall be deemed to be included and implied to the person to whom the conveyance is made. Where the conveyance is to more than one person, such covenants shall be deemed to have

included and implied to each of the persons to whom the conveyance is made:

- (a) for payment of the mortgage money and interest, and observance in other respects of the terms and conditions of the mortgage;
- (b) for good title;
- (c) for the right to convey;
- (d) that on default, the mortgagee shall have quiet possession of the land, free from all encumbrances,
- (e) that the mortgagor will execute such further documents regarding the lands being conveyed as may be required, and
- (f) that the mortgagor has done no act to encumber the land mortgaged.

62. Implied covenants in mortgages are joint and several.- In a mortgage, where more than one person are expressed to convey as mortgagors, the implied covenants on their part shall be deemed to be joint and several covenants by them. Where there are more than one mortgagees the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount is expressed to be secured to them in shares or distinct sums. If it is expressed in distinct shares and sums then the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share, or distinct sum secured to each mortgagee.

63. Defence of purchase for value without notice.- Where a person purchases a mortgage in good faith, the purchaser may, to the extent of the mortgage, and except as against the mortgagor, rely on the defence of purchase for value without notice in the same manner as a purchaser of the mortgaged property might do.

64. (1) Rights upon default.- Subject to the provisions of the mortgage agreement and this Act, where default has been made in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage the rights of mortgagee include but are not limited to

- (a) the rights provided under the covenants implied under Section 61;
- (b) the right to distress moveable property and goods situated on the mortgaged property for interest in arrears;
- (c) the right to exercise a power of sale; and
- (d) the right to foreclose on the property.

(2) Agricultural Land.- Despite any agreement to the contrary, where the mortgaged property is agricultural land and the balance of such lands remaining in the possession of the mortgagor is less than five acres, and default has been made in making any payment of principal or interest due under the mortgage agreement, or in the observance of any covenant in a mortgage agreement, no rights of a mortgagee under the mortgage agreement or this Part are enforceable without prior permission of the Court.

65. Limitations on right to seize and sell goods and moveable property.-

- (a) Despite any stipulation in the mortgage to the contrary, the right of a mortgagee to seize and sell moveable property situated on the mortgaged property for interest in arrears is limited to those goods of the mortgagor which are not prescribed as exempt from seizure under execution.
- (b) Where the right to seize and sell for arrears of interest or for rent under the provisions of any mortgage is relied on against the creditors of a mortgagor, or a person in possession of a mortgaged premises, such right is restricted to one year's arrears of the interest or rent, as the case may be.

66. Notice of sale.- Goods and moveable property sold by a mortgagee shall not be sold except after such public notice as is prescribed by the regulations.

67. (1) Statement of arrears, expenses, etc. - The mortgagor may, by a notice in writing, require the mortgagee to furnish the mortgagor with a statement in writing,

- (a) of the amount of the principal or interest with respect to which the mortgagor is in default; or
- (b) of the nature of the default or the non-observance of the covenant,
and of the amount of any expenses necessarily incurred by the mortgagee.

(2) Answer required within 10 days.- The mortgagee shall answer a notice given under Subsection (1) within ten days after receiving it. If without reasonable excuse the mortgagee fails to do so, or if the answer is incomplete or incorrect, any rights that the mortgagee may have to enforce the mortgage shall be suspended until the mortgagee has complied with Subsection (1).

68. Notice of power of sale.- A mortgagee shall not exercise a power of sale unless a notice of exercising the power of sale in the prescribed form has been given by the mortgagee to the following,

- (a) persons having an interest in the mortgaged property prior to that of the mortgagee;

- (b) any other persons subject to whose rights the mortgagee proposes to sell the mortgaged property;
- (c) every person appearing in the register of title;
- (d) where there is a lien against the mortgaged property in favour of the Royal Government or any other public authority, and the mortgagee has written notice of the lien to the agency or department of the Royal Government claiming the lien;
- (e) to any person who has provided the mortgagee with notice in writing of any other interest, provided the notice is received by the mortgagee prior to the giving of notice exercising the power of sale.

69. (1) When notice may be given and power exercised.- Upon default, a person wishing to exercise the power of sale must first wait ten days after the mortgagor has defaulted according to the terms of the mortgage before giving notice of their exercising the power of sale, following which the sale shall not be made for at least an additional forty-five days after the notice has been given.

(2) Abridgement of time.-

- (a) If the period of default after which notice exercising a power of sale may be given as provided by the mortgage is greater than the period of default mentioned in Subsection (1) then the period of default stated in the mortgage applies; or
- (b) If the period of time after notice has been given after which the mortgaged premises may be sold as provided by the mortgage is greater than the period of time mentioned in Subsection (1) then the period of time mentioned in the mortgage applies.

70. (1) Restrictions as to proceedings.- Where, under any condition or term contained in a mortgage, a demand or notice has been made or given, either requiring payment of all or part of the money secured by the mortgage, or declaring an intention to proceed under and exercise the power of sale contained in the mortgage, no further proceeding and no action to enforce the mortgage shall be commenced or taken, until after the lapse of the time provided for in the demand or notice, unless an order permitting further action has been obtained from the Court.

(2) Proof on which order may be granted.- The order of the Court authorizing further action may be obtained without notice or with such notice as the Court may direct upon such proof as satisfies the Court that it is reasonable and equitable that the proposed action or proceeding should be permitted.

(3) Exception.- This section does not apply to proceedings to prevent damage to, or

diminution in the value of, the mortgaged property.

- 71. (1) Where payment made on terms of notice.-** Where a demand or notice requires payment of all money secured by or under a mortgage, the person making such demand or giving such notice is bound to accept and receive payment of the money if the payment is made as required by the terms of the demand or notice.
- (2) Payment or tender of costs.-** If there is a dispute as to the costs payable by the person by or on whose behalf such payment is made or tendered, such costs shall be assessed and ascertained by the Court.
- (3) Deemed compliance with demand.-** Where the time limited by the demand or notice requiring payment expires before the assessment of the costs has been completed, the amount due apart from the costs claimed may be paid, and payment of the amount allowed for costs within ten days after the costs are determined shall be deemed a compliance with the demand or notice.
- 72. Powers incident to mortgages which do not expressly contain a power of sale.-** Where any principal money is secured by mortgage of land, the mortgagee has the following powers as if they had been expressly conferred by the terms of the mortgage:
- (a) A power to sell, or to agree with any other person in selling, the whole or any part of the mortgaged property by public auction or private contract, subject to any reasonable conditions the mortgagee may think fit to make, and to buy at an auction and to rescind or vary contracts for sale and without being answerable for any loss occasioned by such actions.
- (b) A power to insure and to keep insured against loss or damage by fire any building or any effects or property, whether affixed to the property or not, forming part or all of the mortgaged property, and the premiums paid for any such insurance are a charge on the mortgaged property, in addition to the mortgage money and with the same priority and with interest at the same rate as the mortgage money.
- 73. Manner of giving notice, general rules.-** A notice exercising power of sale shall be given by personal service or by registered mail addressed to the person to whom it is to be given at the person's usual or last known place of address, or the address that is shown on the registered instrument under which the person acquired an interest in the property.
- 74. When notice by mail effective.-** A notice of exercising a power of sale shall, if given by registered mail, be mailed in Bhutan, and such a notice shall be deemed to have been given on the tenth day following the day on which it was mailed.
- 75. Impeachment of title.-** Where a notice has been given in professed compliance with this Part, the title of the purchaser is not liable to be challenged on the ground that the provisions

of this Part respecting default, and the provisions of this Part respecting notice, have not been complied with. Any person who suffers a loss as a result has a remedy against the person exercising the power of sale.

76. Notice rules paramount.- Despite any agreement to the contrary or any provision contained in any mortgage, or any provision of this or any other Act, Section 73 applies to any power of sale.

77. (1) Application to Court allowed for exercise of sale without notice.- Where default under a mortgage agreement has continued for fifteen days, a mortgagee may apply without notice to a judge of the Court for leave to exercise power of sale without notice.

(2) Court may grant directions.- Upon an application under Subsection (1), the judge shall, having regard to the circumstances, either grant leave to exercise the power of sale without notice or with such notice to such persons, in such manner, and within such time as he or she considers proper.

78. Right to documents and conveyance of legal estate.- At any time after a power of sale has become exercisable, the person entitled to exercise the power of sale is entitled to demand and recover from the mortgagor all deeds and documents in the mortgagor's possession, or power relating to the mortgaged property. If a party fails to comply with this Section, the court shall issue an order requiring compliance.

79. Mortgagor may rectify default prior to sale or Court action.- Despite any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage, or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured by the mortgage has become due and payable, then

(a) at any time before sale under the mortgage whether or not the mortgagee has taken possession of the property; or

(b) before the commencement of an action for the enforcement of the rights of the mortgagee, or of any person claiming through or under the mortgagee,

if the mortgagor performs such covenant or pays the amount then due under the mortgage, and pays any expenses necessarily incurred by the mortgagee, then the mortgagor is relieved from the consequences of the default.

80. Conveyance to the purchaser.- The person exercising the power of sale has the power to convey or assign to, and vest in the purchaser the property sold for all the estate and interest the mortgagor had in the property, and of which the mortgagor had power to dispose.

- 81. (1) Disposal of mortgaged property.-** Where a mortgagee chooses to enforce a power of sale the mortgagee may dispose of the mortgaged property without taking possession and in its condition either before or after any commercially reasonable repair, processing or preparation for disposition.
- (2) Methods of disposition.-** Mortgaged property may be disposed of in whole or in part, and any such disposition may be by public sale, private sale, lease or otherwise and, may be made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable and in compliance with this Act and the regulations.
- (3) Mortgagee's right to delay disposition.-** The mortgagee may delay disposition of all or part of the mortgaged property for such period of time as is commercially reasonable.
- (4) Mortgagee's right to purchase mortgaged property.-** The mortgagee may buy the mortgaged property or any part of the mortgaged property only at a public sale, unless the mortgagor agrees in writing.
- 82. (1) Receipts for purchase money sufficient evidence of sale.-** A receipt for purchase money given by the person exercising the power of sale conferred by this Act is sufficient evidence of the sale to the purchaser, and the purchaser is not liable for the manner in which the seller applies the purchase money.
- (2) Purchaser entitled to registration.-** A person who purchases land from a person exercising a power of sale is entitled to the property, whether or not subject to encumbrances, and may apply to the appropriate Dzongkhag or City Corporation land records office to be registered as owner of the land and upon receipt of such application the registrar shall take such action or make such entries as is required to give effect to this section.
- 83. (1) Application of purchase money.-** The money arising from the sale shall be applied by the person receiving the money as follows:
- First, in payment of the reasonable expenses of the mortgagee incident to the sale or attempted sale, including the cost of insurance and payment of taxes and other charges incurred in retaking, holding, repairing, processing and preparing for disposition and disposing of the mortgaged property, and to the extent provided for in the mortgage agreement, any other reasonable expenses incurred by the mortgagee;
- Second, in discharge of all interest and costs then due in respect of the mortgage under which the sale was made;
- Third, in discharge of all the principal money then due in respect of the mortgage;
- Fourth, if the mortgagee does not receive a written claim in the proceeds, the residue shall be

paid to the mortgagor. But if the mortgagor does receive a written claim in the proceeds, the residue shall be paid into court.

(2) Deficiency.- Unless otherwise agreed in the mortgage agreement, or unless otherwise provided under this or any other Act, the mortgagor is liable for any deficiency

84. (1) Foreclosure.- A mortgagee may, after a power of sale is exercisable in accordance with this Part, propose to accept the property in satisfaction of the mortgage money secured and shall serve a notice of the proposal on the persons mentioned in Section 68.

(2) Objection.- If any person entitled to notification under Subsection (1), whose interest in the mortgaged property would be adversely affected by the mortgagee's proposal, delivers to the mortgagee a written objection within thirty days after service of the notice, the mortgagee shall dispose of the mortgaged property in accordance with this Part.

(3) Proof of interest.- The mortgagee may require any person who has made an objection to the proposal to furnish proof of that person's interest in the mortgaged property and, unless the person furnishes the proof within ten days after demand by the mortgagee, mortgagee may proceed as if no objection had been made.

(4) Application to judge.- Upon application to the Court by the mortgagee, and after notice to every person who has made an objection to the proposal, the Court may order that an objection to the proposal of the mortgagee is ineffective because,

- (a) the person made the objection for a purpose other than the protection of the person's interest in the mortgaged property or in the proceeds of a disposition of the mortgaged property; or
- (b) the fair market value of the mortgaged property is less than the total amount owing to the secured party and the estimated expenses recoverable under Section 83.

(5) Where no objection made.- If no effective objection is made, the secured party is at the expiration of the thirty day period mentioned in Subsection (2), deemed to have irrevocably elected to accept the collateral in full satisfaction of the obligation secured, and is entitled to the mortgaged property free from all rights and interests in the mortgaged property of any person entitled to notification under Subsection (1) whose interest is lower in priority to that of the mortgagee and who was served with such notice.

85. (1) Redemption of mortgaged property.- At any time before

- (a) the mortgagee has disposed of the mortgaged property or contracted for such disposition, or
- (b) before the mortgagee shall be deemed to have irrevocably elected to accept the

collateral under Subsection 84 (5),

any person entitled to receive notice under Section 68 may, unless the person has otherwise agreed in writing after default, redeem the mortgaged property by tendering fulfillment of all obligations secured by the mortgaged property together with a sum equal to the reasonable expenses referred to in Section 83 incurred by the secured party.

(2) Where more than one wishes to redeem.- Where more than one person elects to redeem under Subsection (1), the priority of their rights to redeem shall be the same as the priority of their respective interests in the mortgaged property.

86. (1) Court required to assist a party enforce its rights of possession etc. - Where a mortgagee is unable to obtain possession, or to enforce any other rights provided in the mortgage agreement or this Part for any reason whatsoever, then upon application of the mortgagee to the Court, and upon the mortgagee establishing that there has been a default under the mortgage, which default entitles the mortgagee to the rights and remedies provided in the agreement or this Part, the Court shall issue an order enabling the mortgagee to proceed with respect to the mortgaged property in accordance with the mortgagee's rights, remedies and duties.

(2) Discretionary Court orders.- Upon application to the Court by a mortgagor, a mortgagee, a person who may owe payment or performance of the obligation secured by the mortgage, or any person who has an interest in the mortgaged land which may be affected by an order under this section, the Court may,

- (a) make any order, including binding declarations of rights and injunctive relief, that is necessary to ensure compliance;
- (b) give directions to any party regarding the exercise of the party's rights or the discharge of the party's obligations;
- (c) make any order necessary to determine questions of priority or entitlement in, or to the mortgaged land or its proceeds; and
- (d) make any order necessary to ensure protection of the interests of any person in the mortgaged land, but only on terms that are just for all parties concerned.

87. (1) Care of mortgaged property.- Where a mortgagee has obtained possession of the mortgaged property prior to sale or foreclosure, the mortgagee shall use reasonable care in the custody and preservation of the mortgaged property.

(2) Rights and duties of mortgagee.- Unless otherwise agreed, where mortgaged property is in the mortgagee's possession,

- (a) reasonable expenses, including the cost of insurance and payment of taxes and other charges incurred in obtaining and maintaining possession of the mortgaged property and in its preservation, are chargeable to the mortgagor and are secured by the mortgaged property. Costs associated with improving the property, other than reasonable repairs and modifications performed to prepare the property for sale are the responsibility of the mortgagee;
- (b) the risk of loss or damage, except where caused by the negligence of the mortgagee, is on the mortgagor to the extent of any deficiency in any insurance coverage;
- (c) the mortgagee may hold as additional security any increase or profits, except money, received from the mortgaged property. Money so received, unless remitted to the mortgagor, shall be applied forthwith upon its receipt in reduction of the obligation secured.

(3) Liability for loss.- A mortgagee is liable for any loss or damage caused by the mortgagee's failure to meet any obligations imposed by Subsection (1) or (2), but does not lose the security interest in the mortgaged property.

(4) Use of mortgaged property.- A mortgagee may use the mortgaged property,

- (a) in the manner and to the extent provided in the mortgage agreement;
- (b) for the purpose of preserving the mortgaged property or its value; or
- (c) pursuant to an order of the Court upon application by the mortgagee.

88. (1) Person deemed to be landlord.- A mortgagee who obtains possession of mortgaged residential premises which are the subject of a tenancy agreement between the mortgagor and a tenant or who obtains title to the residential premises by foreclosure or power of sale shall be deemed to be the landlord under the tenancy agreement.

(2) Previous landlord ceases to be landlord.- A person who is the landlord under a tenancy agreement ceases to be the landlord while another person is deemed to be the landlord under Subsection (1).

(3) Obligations of new landlord.- A person who is deemed to be a landlord under Subsection (1) is subject to the tenancy agreement and is liable for the obligations of a landlord.

(4) Notice to tenants.- A person who is deemed to be landlord shall serve written notice in prescribed form to all tenants of the change in the landlord.

89. Collection rights of mortgagee.- Where so agreed and in any event upon default under a mortgage agreement, a mortgagee is entitled,

(a) to notify any person obligated to the mortgagor under a lease or rental agreement in respect of the mortgaged property to make payment to the mortgagee whether or not the assignor was previously making collections on the agreements prior to such notice; and

(b) to take control of any proceeds to which the mortgagee is entitled.

90. Priorities of mortgages.- Where more than one mortgage exists on a particular piece of property, the priority of the claims under such mortgages shall be determined by the order in which the mortgages were registered, unless otherwise agreed.

PART VI

REGISTRATION

- 91. (1) Registration system.-** One or more registration systems in respect of immovable and moveable property, including a central office and branch offices, shall be maintained for the purposes of this Act.
- (2) Branch offices.-** Branch offices of the registration system shall be established at such places as are designated by the regulations.
- 92. (1) Registrar, branch registrars.-** There shall be registrars of moveable property security and mortgages, and a branch registrar for each branch office.
- (2) Idem.-** The registrar shall be a public servant designated as registrar by the Royal Government.
- (3) Idem.-** The branch registrars shall be those public servants designated by name or position as branch registrars by the registrar.
- (4) Seal of office.-** The registrar shall have a seal or stamp of office in such form as the Royal Government may approve.
- (5) Delegation.-** The registrar, and each branch registrar may designate one or more public servants to act on his or her behalf.
- 93. (1) Registration of mortgage.-** A notice of a mortgage interest may be registered in the appropriate Dzongkhag or City Corporation, as the case may be, in the prescribed form.
- (2) Registration of security interest.-** A security interest may be registered in the appropriate registry office, in the prescribed form.
- (3) Notice of security interest in moveable property may be registered in land registry office.-** A notice of security interest, in the prescribed form, may be registered in the proper land registry office, where,
- (a) the collateral is or includes fixtures or goods that may become fixtures or crops, or minerals or hydrocarbons to be extracted, or timber to be cut; or
- (b) the security interest is a security interest in a right to payment under a lease, mortgage

or charge of immovable property to which this Act applies.

94. (1) Effect of registration.- Where a notice has been registered under this Part, every person dealing with the collateral shall be deemed to have knowledge of the security interest.

(2) No transfer of mortgaged property.- Where a mortgage has been registered under this Part, no conveyance of the mortgaged property may be registered by the Land Records Office without the prior written permission of the mortgagee.

(3) No transfer of vehicles where security interest is registered.- Where a security interest has been registered under this Act, no conveyance of a motor vehicle may be registered by the Surface Transport Authority without the prior written permission of the secured party.

95. Registering agency liable for registration without permission.- Where

(a) the Dzongkhag or City Corporation Land Records Office registers a conveyance of mortgaged property in violation of Subsection 94(2) without obtaining a certificate of the registrar issued immediately prior to the conveyance, and indicating that no mortgage is registered, it shall be liable for the mortgage secured by such property; and

(b) the Surface Transport Authority registers a conveyance of a motor vehicle in violation of Subsection 94 (3) without first obtaining a certificate of the registrar issued immediately prior to the conveyance, and indicating that no security interest is registered, it shall be liable for the debt secured by the vehicle pledged as collateral

and the mortgagee or secured party is entitled to a court order enforcing payment.

96. (1) Certificate of registrar.- Upon the request of any person for a search of the land records index, individual debtor name index, business debtor name index, or motor vehicle identification number index, the registrar shall issue a certificate stating, whether the property, name or number with respect to which the inquiry is made is registered in the system as being subject to a mortgage, a debtor, or as a motor vehicle identification number, as the case may be. If a registration exists, the certificate shall provide the registration number of the registered interest and any other recorded information.

(2) Certificate proof of contents.- A certificate issued under Subsection (1) shall be issued upon payment of the prescribed fee and is proof, in the absence of evidence to the contrary, of the particulars stated in the certificate at the time the certificate was issued.

(3) Similar names.- A certificate issued under Subsection (1) may include information relating to a registration which sets out a property, debtor name or vehicle identification number which is similar, in the opinion of the registrar, to the name or number with respect

to which the inquiry is made.

(4) Certified copies.- If the registration statement, or registration change statement is registered as a document in the prescribed form, a person may require that the registrar furnish a certified copy of the registered statement and, upon payment of the prescribed fee, the registrar shall furnish it to the person.

(5) Status of certified copy.- A certified copy furnished under Subsection (4) is proof, in the absence of evidence to the contrary, of the contents of the documents so certified.

97. (1) Registration by delivery of registration statement.- A registration statement or registration change statement that is a document in the prescribed form may be tendered for registration by delivery to the appropriate branch office.

(2) Errors do not invalidate the whole registration.- A registration statement or registration change statement is not invalidated, nor its effect impaired by reason only of the fact that it contains an error or omission, or in its execution, or registration unless a reasonable person is likely to be misled materially by the error or omission.

98. (1) Transfer of collateral with consent.- Where a security interest in moveable property is perfected by registration and the debtor, with the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected fifteen days after the transfer is made unless the secured party registers a registration change statement within such fifteen days.

(2) Transfers without consent.- Where a security interest is perfected by registration and the debtor, without the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred remains perfected.

99. Discharge or partial discharge of registration.- A registration may be discharged or partially discharged by the registration of a registration change statement discharging, or partially discharging the registration.

100. Demand for discharge.- Where a registration statement, or notice of security interest, or mortgage is registered under this Act, and,

(a) all the obligations under a security or mortgage agreement, as the case may be, to which it relates have been performed; or

(b) the agreement provides that part of the collateral covered by a security agreement, or mortgaged property covered by a mortgage agreement to which it relates, as the case may be, is to be released upon payment or performance of certain of the obligations, then upon payment or performance of such obligations,

any person having an interest in the collateral covered by the security agreement, or mortgaged property covered by the mortgage agreement, may deliver a written notice to the secured party or mortgagee demanding a registration change statement or a certificate of discharge or partial discharge.

Within 15 days of receipt of such demand, the secured party or mortgagee, as the case may be, shall give to the person demanding it, the registration change statement, or the certificate of discharge or partial discharge, or both, as the case may be.

101. (1) Removal of information from registration system by registrar without notice.- The registrar may remove from the registration system, information related to a registration statement, or registration change statement,

- (a) if the registration statement is no longer effective;
- (b) upon the receipt of a registration change statement discharging the registration;
- (c) upon receipt of a Court order requiring the registrar to amend the information recorded in the registration system.

(2) Where notice is required for removal.-The registrar, upon notice to the secured party, may remove from the registration system information related to a registration change statement if,

- (a) it does not set out the correct registration or file number of the registration statement, or registration change statement to which it relates; or
- (b) it does not set out the name of the debtor as that name is set out in the registration statement or registration change statement to which it relates.

102. Transitional provisions.- The provisions of this Part shall not take effect until such time as the Royal Government so declares and until such time the systems and procedures of registration which are in place at the time this Act comes into force shall remain in full force and effect and compliance with such systems and procedures shall be compliance with all registration requirements required under this Act.

PART VII

MISCELLANEOUS PROVISIONS

- 103. No restriction on level of loan amount.-** The value of a loan may exceed the value of the collateral pledged, or immovable property mortgaged in respect of the loan.
- 104. No restriction on value of the collateral which can be pledged.-** There is no limit on the value of collateral or mortgaged property which a secured party or mortgagee may keep in its possession as collateral for a security interest or a mortgage.
- 105. Return of collateral.-** Where property has been pledged as collateral or mortgaged and the property is in the possession of the secured party or mortgagee, as the case may be, then in the absence of an agreement providing otherwise, upon repayment of the loan and satisfaction of all other covenants, the property must be returned to the debtor or mortgagor, as the case may be.
- 106. (1) Additional responsibilities of a mortgagee in possession.-** Where a mortgagee is in possession of the immovable property which is the subject of the mortgage, then in the absence of default, and unless the mortgagee has exercised its power of sale or foreclosure under this Act, the mortgagee is not allowed to sell, donate, convey by way of gift, construct buildings, transform wet lands into dry lands, and in the case of reserved forests, harvest or burn timber, or otherwise engage in waste of the property.
- (2) Penalties for failure to fulfill obligations.-** Where a mortgagee breaches the obligations imposed by this Section, the mortgagor is entitled to regain possession of the mortgaged property and the mortgagee shall be subject to a fine equal to the value of the damage caused by such breach.
- (3) Liability not effected.-** Notwithstanding Subsection (2), the mortgagor remains liable for all obligations under the mortgage agreement.
- 107. Payment of tax.-** The registered holder of mortgaged property is responsible for all taxes on such property.
- 108. Where owner of land not found.-** If the rightful owner, or his successors and assigns of land which is subject of a mortgage cannot be located, then upon payment by the Government of all outstanding obligations under the mortgage, the land will be forfeit to the Government. If the owner, or his rightful successors or assigns subsequently make a claim on the land, the Government shall return the land to the claimant upon payment of all amounts disbursed by the Government in satisfaction of the mortgage.

109. Where mortgaged property is lost to natural calamity.- In the event that immovable property which is subject to a mortgage agreement is damaged by fire, flood or other natural disaster then

- (a) the owner of the property cannot claim the value of the lost property from the mortgagee,
- (b) the mortgage liability shall be reduced by the amount of the loss, but only where the property was not insured, and
- (c) if the house which is the subject of the mortgage is the only immovable property owned by the mortgagor, then interest will cease to accrue on the obligations under the mortgage agreement from the date of the disaster.

110. Where debtor has absconded.- Where a debtor has absconded and has been declared an absconder by a Court of competent jurisdiction in Bhutan, then any property of the absconder which was the subject of a security agreement or mortgage, as the case may be, shall be forfeit to the Government upon payment by the Government to the secured party or mortgagee, of all amounts secured by the security agreement or mortgage agreement. In the event that the Government so agrees, the secured party or mortgagee may exercise all rights provided for in the agreement and under this Act.

111. Responsibility of guarantor when debtor absconds.- Where a debtor has absconded and been declared an absconder by a Court in Bhutan, and the obligations under the loan or mortgage agreement are guaranteed, then unless otherwise provided in the agreement guarantor shall be liable for all amounts outstanding under the loan or mortgage agreement, as the case may be.

112. Absconders responsible for principal and interest.-Where a person has amounts outstanding under a loan or mortgage agreement and that person has absconded and been declared an absconder by a court in Bhutan, then the person remains liable for all amounts outstanding under the loan or mortgage agreement.

In the event that the obligations of the absconder have been satisfied by the Government or by a guarantor under Sections 110 or 111, then by subrogation, the Government or guarantor assumes all rights and obligations under the agreements which gave rise to such obligations.

The above is without prejudice to the rights and obligations of a secured party under a security agreement or a mortgagee under a mortgage agreement.

113. Interest permitted where payment is by instalment.-Where property, moveable or immovable, is sold and under the terms of the purchase agreement, the purchase price is to be paid in installments then interest on such installments will be chargeable as per the terms of

the agreement.

- 114. Agreements which require debtor to work for secured party or mortgagee void.-** Provisions of a loan or mortgage agreement which require the debtor or mortgagor to work for the secured party or mortgagee, as the case may be, are null and void. Where a person has been forced to work for a secured party or mortgagee in contravention of this Section, the value of the labour performed will be assessed according to the maximum wage rate for such work as paid by the Government, and an amount equal to such value will be deducted from the amounts outstanding under the loan or mortgage agreement, as the case may be.
- 115. Extortion of property in satisfaction of debt not allowed.-** Where a secured party or mortgagee extorts property from a debtor, then such property will be returned to the debtor and the amounts outstanding under the loan or mortgage agreement will be deducted and reduced by the value of the extorted property as determined by the Court, and the secured party or mortgagee shall be subject to punishment in accordance with the laws of the land.
- 116. Interest during imprisonment.-** Where a person is a debtor under a loan or mortgage agreement and that person has been convicted of a crime and sentenced to prison, from the date on which the person is sentenced to the date of his release from prison, no interest shall be payable or chargeable on the obligations outstanding at the time the debtor is sentenced; provided however, that it is established to the Court's satisfaction that the mortgagor's imprisonment has adversely affected the fulfillment of the obligations under the loan or mortgage agreement as the case may be. The prohibition on interest in this section is without prejudice to the remaining rights and obligations of the secured party or mortgagee as the case may be, under the terms of the security agreement or mortgage agreement.
- 117. Liability following death of a debtor.-** Where a debtor has died and there remains outstanding obligations under a loan, security or mortgage agreement to which the deceased was a party, then the estate of the deceased is responsible for the obligations.
- 118. Divorce.-** Where property is the subject of a security or mortgage agreement, as the case may be, and such property is, or becomes subject to competing claims under a stay order of the Court in a divorce proceeding, then such property shall be dealt with in accordance with the order of the Court.
- 119. Return of loan where loan was granted in kind.-** Where a loan is granted in kind, then unless the loan agreement provides that the value of the goods when returned must be of a certain value, then the obligation to repay the loan shall be satisfied if the goods are returned in the same condition as they were in at the time the loan was granted, subject to reasonable wear and tear.
- 120. Family members not liable.-** Notwithstanding that a debtor has been sentenced to prison,

declared an absconder or deceased, the family members of that debtor are not liable for the debts of the debtor unless they are signatories to the loan or mortgage agreement, or have signed a guarantee of the obligations. Where they are signatories to the loan or mortgage agreement or have guaranteed the obligations they are liable only to the extent specified in the agreement.

- 121. Rights of secured party or mortgagee not prejudiced by imprisonment, absconding, or death but right of redemption extends to family members.-** Where a debtor has been sentenced to prison, has been declared an absconder by a Court in Bhutan, or is deceased, then such fact is without prejudice to the rights and obligations of the secured party or mortgagee under the security or mortgage agreement, including the power of sale and the right to foreclose. However, the right of redemption provided for in this Act extends to the family of the debtor or mortgagor, as the case may be.
- 122. Court may make orders providing relief to impecunious debtors.-** Subject to any laws of Bhutan with specific application to bankruptcy, where a debtor is unable to pay his debts as they are due and, then upon application by such person to a Court, the Court may make an order declaring the person as being unable to satisfy his financial obligations and,
- (a) if the person is able to work, requiring the debtor to work for the secured party or the mortgagee, as the case may be, until the obligations under the loan or mortgage agreement are satisfied; or
 - (b) if the person is unable to work, such other order as is just and equitable in the circumstances.

