

## **REFORM OF THE BILLS OF SALE ACT**

### **Executive Summary**

The Sub-Committee to review the Bills of Sale Act is pleased to submit the following recommendations to modernise the law relating to personal property security.

- 1 The Bills of Sale Act represents a rigid, restrictive and archaic approach to personal property security and should be replaced by a comprehensive personal property security law applicable whether the property to be subject to a security interest is goods or a chose in action and whether the debtor is a corporate or non-corporate person.
- 2 This law should define the security interest as an interest in personal property created by a transaction which in substance secures payment or performance of an obligation.
- 3 In amplification of the general definition of security interest, there should be a list of interests which are included or excluded as security interests.
- 4 This law should also lay down uniform requirements for the creation of a security interest, whether possessory or non-possessory in nature.
- 5 Where several security interests are created in the same property, their priorities should depend on whether, in the case of a possessory interest, the collateral has been taken into possession and in the case of a non-possessory interest, a financing statement describing the transaction creating it has been filed.
- 6 As a general rule, priority should be given to that interest in respect of which all the necessary steps for securing priority were first taken and completed.
- 7 As a qualification to that general principle of priorities, purchase money security interests which inject new value to the debtor's business should be accorded super-priority.
- 8 Security interests in consumer goods (including motor vehicles) of less than a specified value should be excluded.
- 9 To facilitate trade, purchasers of goods sold or leased in the ordinary course of the debtor's business should take free of any security interest in those goods.
- 10 Financing statements should be filed on a real time basis with a computerised Register of Personal Property Security.

# REFORM OF THE BILLS OF SALE ACT

## Introduction

1. On October 28 1995, a Sub-Committee was appointed to review the Bills of Sale Act and make recommendations as to its reform, if desirable. On March 19 1996, the Sub-Committee presented an interim report to representatives from the trading and financial industries, relevant government departments and statutory organisations, inviting comments and submissions. The Sub-Committee then finalised its recommendations, taking into account the very helpful submissions which were received. This report contains the final recommendations of the Sub-Committee.

2. The Bills of Sale Act was enacted as long ago as November 1 1886 with a two-fold intention: first, to require registration of all transactions (known as bills of sale) which pass title to but not possession of personal chattels or which create a charge or right of seizure but leave possession where it is; and second, to prescribe a statutory form of bill of sale for the protection of needy debtors who might otherwise be pressured into giving a bill of sale without fully comprehending its nature and consequences.

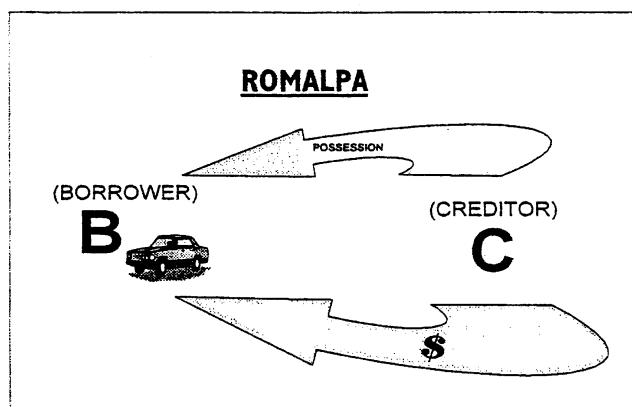
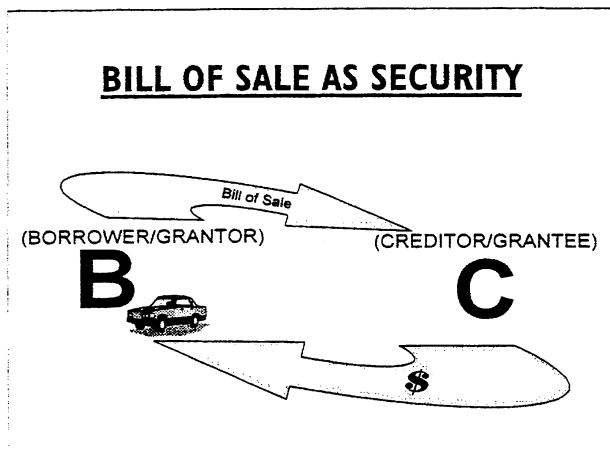
3. The first concern was to facilitate secured credit financing as well as ensure that the ostensible ownership arising from possession remaining in the grantor (of a bill of sale) would not impede the course of secured credit financing. Thus, registration of such transactions gives public notice that the person in possession is no longer the owner or no longer enjoys effective control and serves both to protect the financier who has given credit on the security of a bill of sale as well as protect other financiers and creditors from further lending to the person in possession against what appears to be ownership. If such transaction is not registered, it is void against execution creditors and trustees in bankruptcy or liquidators of the debtor.

4. The second concern was to control the contents of a bill of sale and this was achieved by severely restricting the terms which might be inserted in a bill of sale and by requiring strict conformity with the prescribed statutory bill of sale.

## Criticisms of the Act

5. The importance of facilitating secured credit and of protecting needy debtors has not diminished. But on the one hand, the prescription of a statutory bill of sale, so far from protecting needy debtors, has proven to be a serious impediment in the facilitation and development of secured credit. Few financiers are willing to brave the technicalities and inflexibility involved in giving credit on the security of a bill of sale.<sup>1</sup>

6. On the other hand, the march of twentieth century commerce has rendered the Bills of Sale Act archaic in many respects. Under the Act, the determination whether a transaction falls within the Bills of Sale Act is too much a matter of form as opposed to substance;<sup>2</sup> as a result, the Act is unable to accommodate more modern security transfers. For instance, title retention or *Romalpa*<sup>3</sup> devices whereby the passing of property to a buyer is conditional upon payment in full of the purchase price are (as a matter of substance) security devices. The buyer who agrees to retention of title by the seller is creating a security interest in the goods which he has bought (as a matter of function and substance) but as a matter of form, since no title has passed from the buyer to the seller, the transaction falls outside the Bills of Sale Act. (See diagram below). It does not have to be registered and as a result, there is little protection for other financiers who give credit on the security of these goods.



7. Reform of this deficiency in the Bills of Sale Act is urgent. As more security transactions develop outside the traditional forms, glaring omissions have become more evident. The *Romalpa* devices have been mentioned. Other examples are commercial consignments and financial leases which can be made functionally similar to secured credit financing. At the same time, the development of security transactions adds to the complexity of the law, as essentially similar transactions are treated differently for the purposes of creation, registration, enforceability, priority etc.

8. In many countries, an ad hoc response to the problems of secured credit has also led to the creation of a multiplicity of registers of security interests in personal property. Apart from the conditional sale register, which tends to be transaction based, other registers, which tend to be asset based and such as those which deal with security interests in accounts receivables or motor vehicles, can be found.<sup>4</sup> It is no wonder therefore that the elimination of a multiplicity of registers has been a powerful impetus in the reform of personal property security law. This has especially been the case in federated countries in which there are not only state or provincial registers but also federal registers, creating a fragmented system, which impedes commerce and adds to the risks and costs of lending on security.

9. Where new security interests in personal property are devised, the present law also does not make the determination of priorities between competing security interests easy and certain (especially when they are equitable in character), creating an impediment to sophisticated and structured secured credit financing. For instance, if a distributor assigns his book debts to an assignee after buying inventory subject to a title retention clause and selling the goods in the ordinary course of trade, the law should make it easy to rank the priorities of

the interests of the assignee and the seller/beneficiary of the title retention in the proceeds of sale (book debts).<sup>5</sup>

10. The present law involves, where interests are equitable, considerations of the equities of the parties in dispute and priority determinations are complicated. In the foregoing example, neither the assignment nor the title retention is registrable under the Bills of Sale Act and the priority determination of the Act is therefore unavailable. Recourse must be had to section 4(6) of the Civil Law Act which is a little ambiguous as to whether the existing rights of the seller/beneficiary are preserved<sup>6</sup> and if those rights are preserved, there is still uncertainty whether the rule in **Dearle v Hall**<sup>7</sup> will apply.<sup>8</sup> After all this, it must be considered whether priority ought to be deferred on the ground that the equities are unequal.

## **Solutions**

11. The Sub-Committee agrees that reform of the Bills of Sale Act has to involve a much larger question of the rationalisation and modernisation of personal property security law.<sup>9</sup>

12. Some 50 bills of sale are registered weekly and the bulk of them (90%) are concerned with motor vehicle financing (as might be expected since the motor car is an expensive asset in Singapore). This incidence of registration coupled with the few reported cases on the Bills of Sale Act indicates an unimpressive level of secured credit financing, even after making generous allowance for the fact that more modern security transfers will not be within the ambit of the Act. More importantly, it suggests that sole proprietors and partnerships may have less than optimal access to secured credit.

13. Apart from giving sole proprietors and partnerships greater access to secured credit, there is also the need to lower the costs of taking security from corporate debtors by widening the categories of security interests presently registrable under the Register of Company Charges. In short, reform of the law is necessary in order to encourage and develop the secured credit market as a whole for the company as much as the sole proprietor and partnership.

14. One solution would be to tinker with the Bills of Sale Act instead of completely overhauling it. Some deficiencies such as its inflexibility can certainly be redressed within the framework of the Bills of Sale Act; but as the desired result (which is to modernise the law) requires no less than its complete overhaul, the Sub-Committee does not recommend limited reform of the Bills of Sale Act.<sup>10</sup>

15. Instead, the Sub-Committee, after studying the enactments or recommendations which have been made or proposed in the United States, Ontario, Australia, New Zealand and the United Kingdom<sup>11</sup> and after consultations with interested persons, recommends the repeal of the Bills of Sale Act and the enactment of a personal property security law which will be more rational and more comprehensive than the Bills of Sale Act, will require secured creditors who desire priority for their security interests to publicise their interests promptly, will resolve priorities of competing security interests clearly and efficiently, and will enable would be creditors to ascertain the existence of prior security interests, if any, in any proposed collateral readily. Such a law will lower the costs of taking security from both corporate and non-corporate debtors. It will also provide a better check on imprudent and excessive lending to individuals by making available all relevant information readily.

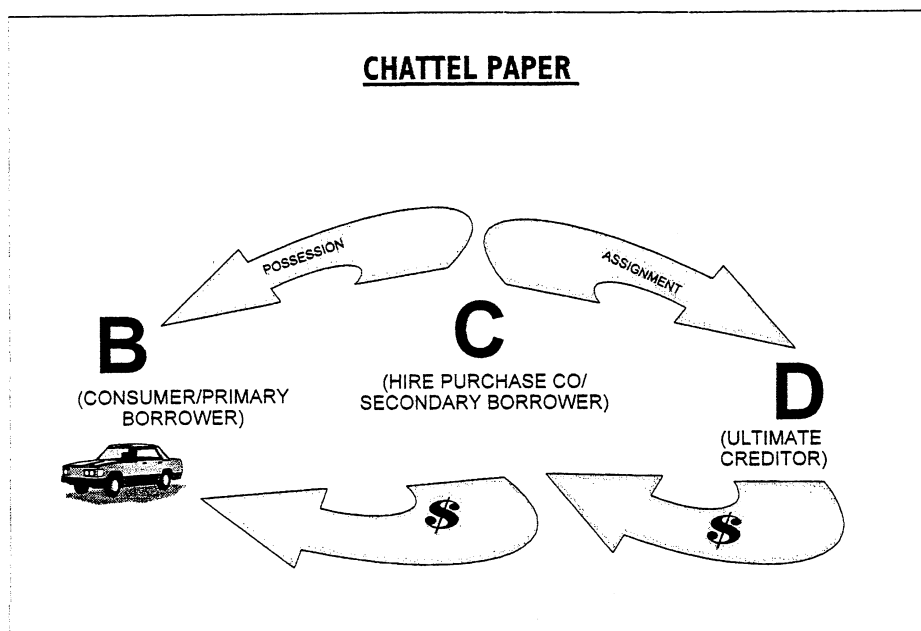
## **Comprehensive Scheme**

16. First, this personal property security law should be comprehensive, applying equally whether the debtor is an individual, partnership, association or corporation and whether the property which is to be collateral is goods or a chose in action.

16.1 Neither the persons consulted with nor the Sub-Committee has any doubt that a uniform personal property security law should apply to unincorporated and incorporated debtors as well as to goods offered as security.

16.2 The question which was much debated was whether the law should also extend to security interests in choses in action. Article 9 of the Uniform Commercial Code which is the source and inspiration of the many proposals elsewhere to reform the personal property security law extends to security interests in choses in action, including negotiable instruments and securities. There was, however, no submission made to the Sub-Committee that the proposed reform should go as far. Some submissions favoured the exclusion of all choses in action.<sup>12</sup> An alternative submission favoured the inclusion of choses in action relating to goods but exclusion of choses in action not relating to goods.<sup>13</sup>

16.3 In the view of the Sub-Committee, a personal property security law which did not recognise the importance of choses in action such as accounts receivables and chattel paper<sup>14</sup> in secured credit financing<sup>15</sup> (see diagram on next page) would be seriously deficient. There are, admittedly, valid concerns that indiscriminate extension to all choses in action could unduly burden financial institutions with the filing requirements which are being recommended. These concerns can best be accommodated not by restricting the general ambit of the personal property security law but by excluding particular choses in action from its ambit.



16.4 Furthermore, while the inclusion of choses in action relating to goods but exclusion of choses in action not relating to goods may seem to be a proper and cautious compromise, to include choses in action relating to goods and exclude choses in action not relating to goods is not entirely logical when choses in action not relating to goods may raise the same problems of ostensible ownership as choses in action relating to goods. A distinction between choses in action relating to goods and choses in action not relating to goods may also be difficult to make. The Sub-Committee therefore recommends that the uniform personal

property security law should not differentiate between choses in action relating to goods and choses in action not so relating.

### **General Definition of Security Interest**

17. Second, the personal property security law should prescribe a functional definition of what a security interest is which will ensure that substance prevails over the form of the security arrangement and the location of title; and to that end, a security interest should be defined as an interest in personal property created by a transaction which in substance secures payment or performance of an obligation.<sup>16</sup> A functional definition will be more rational than the bill of sale conception of security interest and will better accommodate modern security devices. As already stated, 'personal property' includes choses in action.

### **List of Exclusions and Inclusions**

18. Third, in amplification of the general definition of security interest, there should be a list of interests which are excluded as well as those which are included as security interests.

18.1 Such a list will inevitably attract difficulties of construction (as is the case with Article 9 of the Uniform Commercial Code) but difficulties of construction which are an inevitable and unavoidable cost of rationalisation of the law can be minimised if two objectives are kept in mind. First, interests which are functionally security interests but which have hitherto not been so regarded by virtue of applying a bill of sale conception of security interest should expressly be included for the removal of doubts. On the other hand, for the sake of certainty and where the same problem of ostensible ownership exists, interests which should be included although they are not security interests should be specified. Conversely, for the sake of certainty and where the problem of ostensible ownership though it exists is insignificant, security interests which would otherwise be included should be specified as excluded. If any interest is not in the list of exclusions and inclusions, its character as a security interest, if at all, should depend on applying the general definition.

18.2 Having regard to these considerations and the submissions of the persons consulted, the Sub-Committee recommends that the floating charge as well as security interests created by the following transactions be included:

- hire purchase agreements
- conditional sale agreements including agreements to sell subject to retention of title
- transfers of account receivables other than for collection only and transfers of chattel paper other than for collection only
- commercial consignments<sup>17</sup> and leases for a term exceeding one year<sup>18</sup>

18.3 The inclusion of the floating charge will ensure that banks can obtain a satisfactory floating charge from an unincorporated debtor. This will rectify a glaring omission in the Bills of Sale Act.<sup>19</sup>

18.4 As to hire purchase agreements, the current practice of the financier retaining possession of the motor vehicle registration card is only partially effective in preventing further dealings by way of security in the motor vehicle concerned since the registered owner can fairly easily obtain a duplicate registration card. Moreover, the simple expedient of retaining possession of the registration card will cease to be available following the introduction of a computerised scripless motor vehicle registration system. Inclusion of the hire purchase agreement within the proposed personal property security law will anticipate

and complement the introduction of such a scheme. It will also not involve financiers in significant additional costs in having to complete the steps necessary for securing priority.

18.5 Commercial consignments and leases (including bailments of goods) pose a peculiar difficulty in that their true nature, ie whether they are absolute consignments and operating leases respectively or create a security interest, may often be very difficult to ascertain. In the interests of certainty, however, and since they give rise to the same problem of ostensible ownership, commercial consignments and leases for a term exceeding one year should be included whether or not they in fact create security interests.<sup>20</sup> The inclusion of commercial consignments and leases will serve to protect third parties from giving security on goods which belong to the consignor or lessor. Moreover, creditors who deal with commercial consignees should expect them to be substantially engaged in selling the consignors' goods and the inclusion of commercial consignments and the concomitant requirement of publicity by filing will provide a ready means of ascertaining which goods are the consignors'. Non-commercial consignments not being included, whether they require publicity and priority protection by filing will depend on whether they are in fact intended to create a security interest.<sup>21</sup>

18.6 Transfers of accounts receivables<sup>22</sup> other than for collection only<sup>23</sup> should be included. Under the present law, few difficulties are indeed encountered by intended assignees of accounts receivables despite the absence of a requirement of statutory publication of the existence of any prior security interest. This is because third parties who wish to take an assignment can make inquiries of the account debtor. As an assignment of accounts receivables will not secure priority unless the account debtor is notified, inquiries made of the account debtor should be effective in disclosing the existence of any prior assignment.

18.7 It will, however, be unwise to continue to rely on the existing 'common law' notification of accounts debtor system and ignore the need for a more modern non-notification system which avoids the costs and protraction of contacting a legion of account debtors. Inclusion of transfers of accounts receivables except those for collection only will also ensure that whether the transfer of accounts receivables is absolute or a security interest, there will be adequate protection for other financiers at a level of costs which is acceptable.<sup>24</sup> It will also avoid the difficulties of ascertaining the true nature of the assignment or agreement in question.<sup>25</sup> For the same reasons, transfers of chattel paper should be included even though presently the use of chattel paper as collateral may not be very significant.

18.8 The Sub-Committee also recommends the exclusion of statutory liens<sup>26</sup> and charges and security interests created by the following transactions:

- set-offs and transfers of deposit accounts,<sup>27</sup> bank guarantees, and certificates of deposit
- transfers of claims under insurance policies
- transfers of securities or unit trusts
- transfers of interests in immovable property
- transfers of bills of lading and other documents of title
- transfers of negotiable instruments
- transfers of intellectual property
- transfers of tort claims
- transfers of rights represented by a judgment
- transfers of interests in any ship or vessel

18.9 Statutory liens and charges should be excluded either because being possessory possession would give notice of the lien to intended financiers or where not possessory they are far removed from ordinary commercial financing.

18.10 As alluded to earlier (see para 16.3), the exclusion of set-offs and transfers of deposit accounts, bank guarantees or certificates of deposits will ensure that the financial industry is not unduly burdened by the proposed law. Rights of set-off also should be excluded in order to avoid cluttering up the register with security interests in respect of every bank deposit. As for transfers of bank deposit accounts, bank guarantees or certificates of deposit, in practice, few transferees will take such assignments without seeking assurance or information from the bank concerned or obtaining possession of the legal documents and putting it out of the debtor's power secretly to create another security interest. The need for publicity and priority protection by filing is thus insignificant. Transfers of claims under insurance policies should be excluded for the same reasons.

18.11 Transfers of securities or unit trusts and transfers of interests in immovable property should be excluded. The Sub-Committee agrees with the submission that with security interests in securities and unit trusts interests, the wider publicity which registration under the proposed law would entail is not at present desirable. Adequate protection is already secured under existing law commensurate with an acceptable level of publicity.<sup>28</sup> The exclusion of transfers of interests in immovable property follows from the personal property ambit of the proposed law. However, transfers of choses in action relating to immovable property such as assignments of contract rights by a builder, assignments of the vendor's interest in a sale of land contract etc (not being transfers of interests in immovable property) will be within the proposed law if they are security interests.

18.12 Transfers of bills of lading and other documents of title should be excluded. Though they can be security transfers as where a seller ships goods to a buyer under a bill of lading made out to the seller or order, 'they are such well-established types of commercial transactions that it would be unwise to interfere with them'.<sup>29</sup> For similar reasons, transfers of negotiable instruments should be excluded.

18.13 Transfers of intellectual property except copyrights are already covered by other statute and should be excluded. Transfers of copyrights are not at present subject to registration under statute but should also be excluded because copyrights are only occasionally assigned by way of security and it would be difficult to devise a financing statement which would adequately give notice of a security interest in a copyright without requiring the entire document in which the copyright subsists to be deposited.

18.14 Tort claims should be excluded since they are far removed from ordinary commercial financing. Rights represented by a judgment are also far removed from ordinary commercial financing and should be excluded. Nor is there reason to encourage the employment of such fights in secured credit financing. Transfers of interests in any ship or vessel are already adequately covered and should be excluded.

### **Creation of Security Interest**

19. Fourth, for the purposes primarily of determining the rights of the parties to a security agreement<sup>30</sup>, there should be uniform requirements for the creation of a security interest, whether that interest is possessory or non-possessory in nature.<sup>31</sup>

19.1 In agreement with the enactments or proposals in all the countries under study except Australia, the Sub-Committee recommends that the creation of a security interest should require satisfaction of three elements:



- existence of an intention to create the security either by the signing of an agreement in writing or by taking possession in the case of possessory security interests; and
- valuable consideration being given; and
- acquisition of rights by the debtor in the personal property to be subject to a security interest.<sup>32</sup>

19.2 The requirement of writing for the creation of a non-possessory security interest will not be unduly onerous but will facilitate proof of the nature and scope of the security agreement.

### **Steps for Securing Priority**

20. Fifth, for the purposes of obtaining priority as well as acquiring rights against such third parties as execution creditors and the debtor's trustee in bankruptcy, a secured creditor should take appropriate steps to file a financing statement in addition to satisfying the requirements of creation of a security interest. Failure to file should not, however, affect the secured creditor's rights against the debtor or unsecured creditors.<sup>33</sup>

20.1 The financing statement should state the name and address of the debtor (and where the debtor is a company its registration number) and in the case of a property which is identifiable by a serial number, its serial number.

20.2 To minimise costs, detailed statements of the security transaction should not be required; but rather an obligation should be imposed on the secured party to supply all such details including a copy of the security agreement upon request.

20.3 This filing requirement will remove the need for an assignee of a chose in action by way of security to give notice of the assignment to the debtor in order to obtain priority; the assignee's security interest has priority as soon as he files a financing statement in respect of the intended assignment. If the assignee desires the debtor to pay him direct, he will also give notice to the debtor of the assignment but this will not have any legal implications as to priorities.

20.4 The filing of a financing statement in respect of a possessory interest which has been reduced to possession should be unnecessary since the fact of possession in the creditor will give notice of the existence of a prior security interest. In other words, a possessory interest should have priority from the time of possession.

### **Priorities**

21 Sixth, as a general principle, priorities of competing security interests should be determined according to the order of filing of a financing statement or the date of taking possession of the collateral without regard to notice.<sup>34</sup>

21.1 In other words, in a competition between two non-possessory security interests, the first in respect of which a financing statement was filed should prevail.

21.2 In a competition between two possessory security interests, the interest actually reduced to possession and held as collateral should prevail.

21.3 In a competition between a possessory and a non-possessory security interest, the interest first reduced to and held in possession or publicised by filing should prevail.

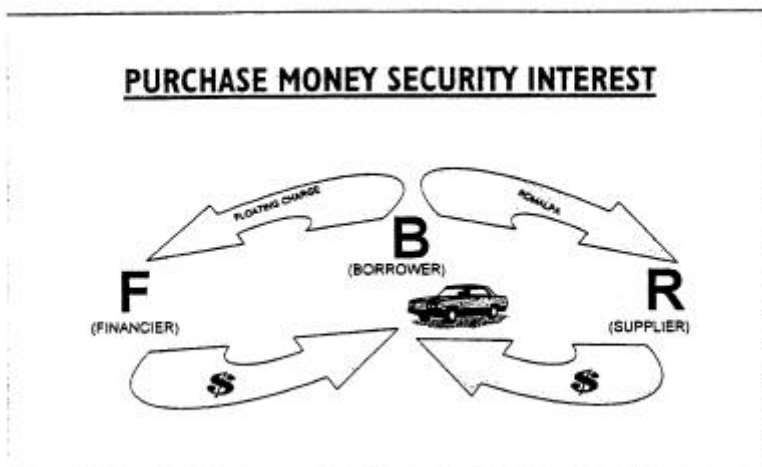
21.4 Where two competing security interests have not been reduced to possession or publicised by filing, the interest first created should prevail.

### Super-priority

22. Seventh, as a qualification to the general rule of priorities as above stated, a purchase money security interest in respect of which a financing statement has been filed within a specified period of acquisition of the collateral should be accorded super-priority so that it will prevail over all other prior non-purchase money security interests.

22.1 Purchase money security interests represent the injection of new value into the debtor's business and the Sub-Committee is of the view that the injection of new value which keeps the business going should be encouraged and rewarded with super-priority. This will not subtract from the assets available to a prior security interest holder since the super-priority is given in respect only of new assets which the purchase money has brought in into the business.

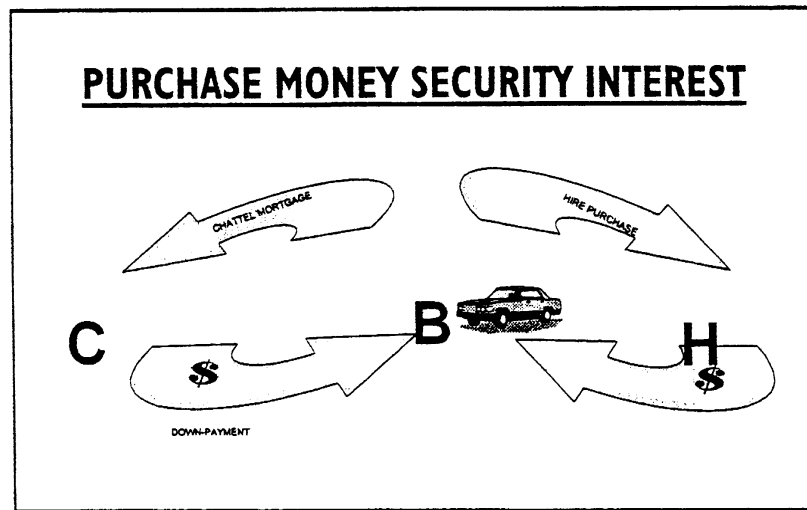
22.2 So notwithstanding that a floating charge financing statement has been filed, if the debtor then buys an asset from a *Romalpa* supplier who files a financing statement within a specified period of time, the purchase money security interest of the supplier should rank ahead of the interest of the floating charge. (See diagram on next page).



22.3 In some countries, the law is or proposals have been made that the holder of a purchase money security interest in inventory (as opposed to equipment and machinery) must notify the holder of a prior security interest, such as a floating charge, in order to obtain super-priority.<sup>35</sup> The Sub-Committee, however, is not persuaded that there should be a difference between purchase money security interests in equipment as opposed to inventory. Both play a part in keeping a business going and neither can be said to be more crucial than the other. Moreover, notification of a prior secured creditor is unnecessary since the requirement that a financing statement describing the purchase money security interest be filed within a specified period from the time of acquisition of the inventory or equipment already implies that the prior secured creditor who wishes to make more advances to the debtor can check the register and discover the exact nature of the new inventory or equipment.

22.4 Where two competing creditors hold super-priority purchase money security interests, priorities should depend on the order in which they have been publicised by filing except in

two categories of cases. So generally, if a financier has financed the downpayment and another has financed the balance of the purchase price of a new equipment, the interest of the financier who files his financing statement first will prevail over the other; though both will take in priority to another holder of a non-purchase money security interest such as a floating chargee. (See diagram below).



22.5 But the security interest of a supplier of goods should have priority over any other purchase money security interest in the same goods. Such other purchase money security interest holders are in a position and should be encouraged to take protective measures not available to a supplier such as making direct payment to the supplier, thus securing for themselves exclusive super-priority by extinguishing the purchase money security interest of the supplier. However, in order to encourage the use of accounts receivables in financing new goods, where a security interest in accounts receivables is given for new value, it should have priority over a purchase money security interest in the accounts receivables as proceeds if the assignee of the accounts receivables has filed a financing statement before the purchase money security interest holder.

22.6 Furthermore, possessory liens over goods, arising in the ordinary course of business, should have priority over any other security interest (including a purchase money security interest) in the same goods. Such possessory liens reflect an addition to or a preservation of the value of the collateral which in effect has helped to preserve the interests of other secured creditors.

22.7 The Sub-Committee also recommends that security interests in goods which subsequently become fixtures should not have super-priority over security interests in the immovable property. The common law should continue to apply with the result that such security interests will be extinguished when the goods become fixtures.

### **Consumer goods**

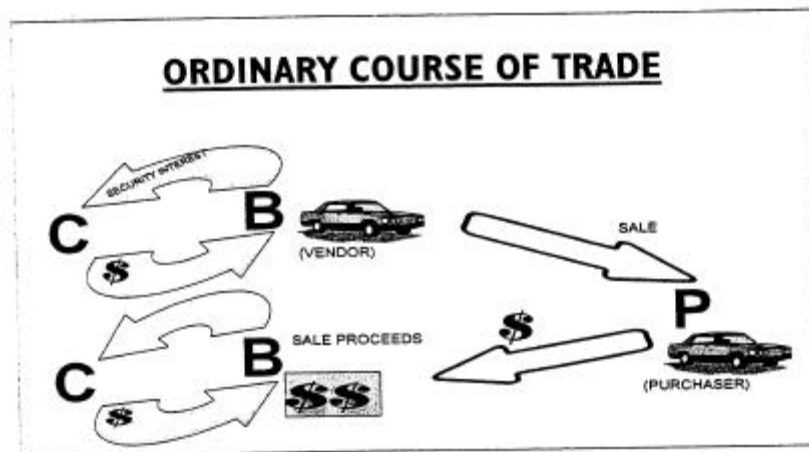
23. Eighth, as a qualification to the principle of a comprehensive personal property security scheme, any security agreement creating interests in consumer goods (including motor vehicles within the meaning of the Road Traffic Act) of less than \$50,000 in aggregate value should be excluded so as not to clutter up the proposed register of personal property security interests. Another important consideration is that the regulation of secured credit financing for commercial purposes is more important than secured credit financing for

consumer purposes; a consumer good is unlikely to be the subject of a second security transaction.

23.1 The limit of \$50,000 in respect of any single security transaction (regardless of how many security interests are created by it) is recommended, having regard to the average household expenditure on consumer goods likely to be financed on security and in agreement with the vast majority of the submissions which were received.<sup>36</sup>

## Purchases

24. Ninth, to ensure that the proposed personal property security scheme does not impede the course of trade, a purchaser or lessee of goods sold or leased in the ordinary course of the debtor's trade or business should take free of security interests (whether created by the seller or someone else) even if he has knowledge of their existence. (See diagram on next page). The purchaser should not be concerned with whether the goods he is buying in the course of the seller's trade are subject to any security agreement. But if he actually knows that the goods are being sold to him in breach of a security agreement to which they are subject, his own interest should be subject to the security interest concerned.



24.1 To accommodate the fact that chattel paper and money have some of the attributes of negotiability:

- a purchaser of chattel paper taking possession of the chattel paper in the ordinary course of his business should have priority over a security interest in the chattel paper of which he has no knowledge.
- a holder of money takes free of a security interest in the money of which he has no knowledge and if he has given value, regardless of his knowledge.

24.2 This means that a prior purchaser of chattel paper (secured party) who does not take possession of the chattel paper risks being subordinated to a subsequent purchaser who takes possession of the chattel paper in the ordinary course of his business. To avoid such risks, the prior secured party can stamp or note the assignment to him on the chattel paper.

24.3 A purchaser of chattel paper taking possession of the chattel paper in the ordinary course of his business should also have priority over a security interest in the chattel paper,

notwithstanding his knowledge of the security interest, when the security interest is claimed merely as proceeds of inventory subject to a security interest.

## Computerisation

25. Tenth, the financing statements to be filed by intended creditors or financiers should be in the form of a real time electronic database, which might be denoted the Register of Personal Property Security. As such a register requires a high degree of accuracy of the financing statement which may be difficult initially to attain, there should be a power to excuse errors and omissions along the lines of section 137 of the Companies Act.

25.1 Further, the proposed Register should be cross-linked to the Register of Charges under the Companies Act so that an entry in one will automatically appear in the other. This should not involve any significant cost increase, will give the intended creditor or financier the option to search either register, and will leave the Register of Charges intact for other purposes of the company law.<sup>37</sup>

## Conclusion

26. These recommendations are made by way of establishing the broad principles which should apply to personal property security. A notable omission is the absence of any recommendations as to the remedies of a secured creditor on default by the debtor. This is because the Sub-Committee is of the view that these remedies should continue to be determined by the common law. Another notable omission relates to subsidiary principles. The broad principles will require to be complemented by subsidiary principles. For instance, the principle that a possessory interest has priority by taking possession needs to be complemented by a subsidiary principle deeming possession to continue notwithstanding it is interrupted for the purposes of ultimate exchange or sale of the collateral. Similarly, tracing principles will be necessary to ensure that a prior security interest continues in any product that is exchanged for the original collateral. The Sub-Committee feels that these subsidiary principles are best left to the *implementation stage, if the broad principles are accepted*.

27. If these recommendations are accepted, it will also be necessary to look into the necessity of consequential amendments to other statutes on which these proposals may have an impact. These consequential amendments may be necessary, for instance, so as to permit extrinsic evidence of the true nature of a transfer even though the documentation states an absolute transfer.

28. In making these recommendations, the Sub-Committee has noted the fact that important Commonwealth jurisdictions are seriously considering similar reforms<sup>38</sup> which to a larger or smaller extent are also based on Article 9 of the Uniform Commercial Code. Such differences as exist are attributable to differences in legislative style, economic condition, commercial practice, and social outlook. These differences are not fundamental. Nor do they reflect fundamental flaws in but rather they indicate a remarkably unanimous endorsement of the scheme.<sup>39</sup> It goes without saying that if the Commonwealth proposals are implemented, their experience will be available in due course for the guidance and consideration of our lawyers and judges.

29. It should also be stated that these recommendations do not overlook the fact that the floating charge will operate differently under the reform proposals since so far as priorities are concerned, the priority of the floating charge will no longer depend on the date of crystallization but on the date of filing of a financing statement. While this may seem to be overly generous to the floating chargee, it must be realised that the floating chargee will nevertheless not prevail against a purchase money security interest holder. The result is to

break the stranglehold of the floating chargee who attempts to make his charge crystallize upon any attempt to create another charge. In short, the perceived unfairness of automatic crystallization will be resolved by the principle of super-priority.

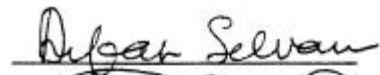
## Acknowledgements

30. It remains only to state that the Sub-Committee wishes to thank the following for their comments and submissions *a propos* its interim report:<sup>40</sup>

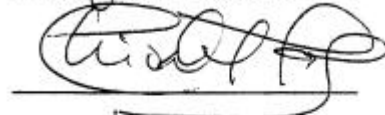
- Association of Banks in Singapore
- Association of Hire Purchase and Finance Companies
- Consumers Association of Singapore
- Finance Houses Association of Singapore
- Leasing Association of Singapore
- Monetary Authority of Singapore (Department of Banking and Financial Institutions and Insurance Commissioners Department)
- Registry of Companies and Businesses

Submitted by the Sub-Committee on Review of the Bills of Sale Act

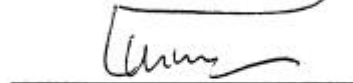
Mrs Arfat Selvam (Chairman)



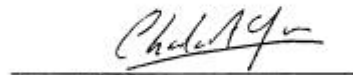
Ms Mavis Chionh (Secretary)



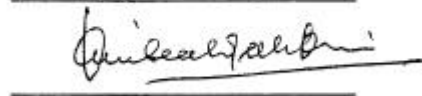
Mr Chua Lee Ming



Mr Charles Lim Aeng Cheng



Mr Kim Seah Teck Kim



Assoc Prof Tan Yock Lin



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<sup>1</sup> See *Ho Security For Credit (Law & Practice in Hong Kong)* (1992) at 256.

<sup>2</sup> This is not to overlook the fact that relatively speaking, the courts apply the substance test to determine whether a transaction is indeed a bill of sale: see **Re Watson** (1890) 25 QBD 27; **Re Lovegrove** [1935] Ch 464 at 495-496; **Polsky v S & A Services** [1951] 1 All ER 185; [1951] 1 All ER 1062n; **Kingsley v Sterling Industrial Securities Ltd** [1967] 2 QB 747. See also **Wok v Harchand Singh** [1953] MLJ 176; **Chelliah v Laxman Singh** [1954] MLJ 210. See also **Welsh Development Agency v Export Finance Co Ltd** [1992] BCLC 148; **Thai Chee Ken v Banque Paribas** [1992] 2 SLR 848.

3 After **Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd** [1976] 1  
WLR 676.

4 Other examples are the Register of mortgages of ships and the Register of Patents and  
Trademarks. The Companies Register is of course an important transaction based  
register.

5 The seller/beneficiary will, for example, be entitled to trace to the sale proceeds if the  
distributor's dispositions, although in the ordinary course of trade, were unauthorised.

6 Because an assignment of a legal chose is 'subject to equities having priority over the  
right of the assignee'.

7 (1828) 3 Russ 1; whereby priority is accorded to the first to give notice to the debtor.

8 The rule applies to competing assignees of choses in action. But a *Romalpa* interest  
seems very different from an interest created by an assignment of a chose in action.  
See D W McLaughlan, 'Priorities - Equitable Tracing Rights and Assignments of  
Book Debts' (1980) 96 LQR 90.

9 Agreeing with the view that "the problems are only part of more extensive problems  
deriving from the unsatisfactory laws concerning security interests in personal  
property": *Insolvency Law and Practice Report* (The Cork Committee) Cmnd 4596  
(1971) at para 1623.

10 The Act for instance is not a Code but to carry through the reform a Code is more  
appropriate.

11 Appendix I contains a tabular comparison of these proposals and enactments.

12 See the submissions of the Monetary Authority of Singapore and the Association of  
Banks in Singapore in Appendix II.

13 See the submissions of the Finance Houses Association of Singapore in Appendix II.

14 Chattel paper means writings that evidence both a monetary obligation and a security  
interest in, or a lease of, specific goods. The hire purchase agreement is an example.

15 **See Re Davis & Co, ex p Rawlings** (1888) 22 QBD 193.

16 Notice that the Bills of Sale Act defines a security bill of sale as securing a money  
payment: see **Re Bonds Ltd** (1921) 2 FMSLR 263.

17 'Commercial consignments' are consignments in which both consignors and  
consignees are dealers in the ordinary course of business in the subject matter of the  
consignments.

18 Leases for a term exceeding one year' include those for a lesser term but renewable  
for one or more terms, the total of which may exceed one year.

19 See also **Re Bonds Ltd** (1921) 2 FMSLR 263. See also W Woon *Company Law*  
(1988) at 347, n 17. In New Zealand, it is reported that banks pressure sole traders to  
incorporate" so that the debtor is able to give the bank a debenture creating fixed and  
floating charges, which necessarily increases the number of companies on the  
register.": *The Law Commission A Personal Property Securities Act for New Zealand*  
(1989) at 10.

20 Thus avoiding the Uniform Commercial Code experience which requires the court to distinguish between absolute leases and leases intended as security. Amendments to § 1- 201(37) now lay down several factors to be taken into consideration.

21 Only one financing statement needs to be filed for any consignment agreement. All subsequent deliveries will be covered by this one financing statement.

22 Accounts receivables is defined by Article 9-106 as 'any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance'. This is a wider definition than book debts which are "debt[s] arising in the course of a business and due or growing due to the proprietor ... [and] would or could in the ordinary course of such a business be entered in well-kept books relating to that business ...": see **Independent Automatic Sales v Knowles** [1962] 1 WLR 974 at 983.

23 Ie transfers of defaulted accounts.

24 The benefits will accrue mainly to small businesses since there is already a provision for the registration of a charge on the book debts of a company.

25 The distinction is often blurred: See Comment to Article 9-102 of the Uniform Commercial Code.

26 See Civil Aviation Authority of Singapore Act s 32; Merchant Shipping Act s 132; Sale of Goods Acts 41.

27 This exclusion does not extend to deposit accounts which are proceeds of other collateral.

28 See Companies Act s 130 and 131.

29 Diamond *A Review of Security Interests in Property* (1989) at 90.

30 The holder of a security interest which is validly created may also sue a third party for conversion.

31 The Bills of Sale Act only applies to non-possessory interests.

32 So a floating charge over after-acquired property will attach at the time when the property is acquired. In respect of that property, the charge will immediately be perfected if the filing was made at an earlier time and the perfection will be deemed to have occurred at the earlier time.

33 So provided that the security interest is validly created the secured creditor should be entitled to enforce his rights over the collateral as against an unsecured creditor.

34 Parties will be free to agree on contractual postponement or subordination of their priority.

35 See Appendix I.

36 See Appendix II.

37 Charges on immovable property will continue to be registered in the Register of Charges.



- 38 Although England's Department of Trade and Industry has rejected the Diamond Report. Inquiries show that Australia is more concerned whether similar reform should be on a national or state level while in New Zealand consideration of the proposed reform has been held back by passage of the Companies Act. See also Ziegel, 'Canadian Perspectives on Chattel Security Law Reform in the United Kingdom' [1995] CLJ 430.
- 39 Although Article 9 is the most heavily litigated portion of the Uniform Commercial Code, this is not an indictment of the article but a consequence of the level of activity which it governs, which is put as a trillion-dollar activity.
- 40 See Appendix II for the written submissions.

# ***APPENDIX 1***

## SCOPE OF SECURITY INTEREST

UCC Art 9	Ontario	Australia	New Zealand	UK (Diamond Report)
<p>General definition of security interest as interest in personal property created by transaction which secures payment or performance of obligation</p>	<p>General definition of security interest as interest in personal property created by transaction which secures payment or performance of obligation</p>	<p>General definition of security interest as interest in personal property created by transaction which secures payment or performance of obligation</p>	<p>General definition of security interest as interest in personal property created by transaction which secures payment or performance by obligation</p>	<p>General definition of security interest as consensual interest in personal property which secures payment or performance of obligation</p>
<p>Applies whether debtor individual or corporate and where individual, whether consumer or non-consumer</p>	<p>Applies whether debtor individual or corporate and where individual, whether consumer or non-consumer</p>	<p>Applies whether debtor individual or corporate and where individual, whether consumer or non-consumer</p>	<p>Applies whether debtor individual or corporate and where individual, whether consumer or non-consumer</p>	<p>Applies whether debtor individual or corporate and where individual, whether consumer or non-consumer</p>
<p>Personal property includes goods, money, security, chattel paper, negotiable instrument, intangible,</p>	<p>Personal property includes goods, money, security, chattel paper, negotiable instrument, intangible,</p>	<p>Personal property includes goods, money, security, chattel paper, negotiable instrument, intangible</p>	<p>Personal property includes goods, money, security, chattel paper, negotiable instrument, intangible</p>	<p>Personal property includes goods, money, security, chattel paper, negotiable instrument, intangible</p>
<p>Rights, obligations and remedies do not depend on location of title.</p>	<p>Rights, obligations and remedies do not depend on location of title.</p>	<p>Security interests arising by operation of law covered</p> <p>Remedies on default may depend on location of title.</p>	<p>Remedies on default may depend on location of title.</p>	<p>Rights, obligations and remedies do not depend on location of title</p>

<b>UCC Art 9</b>	<b>Ontario</b>	<b>Australia</b>	<b>New Zealand</b>	<b>UK (Diamond Report)</b>
<p><i>Inclusions</i></p> <p>interest created by:</p> <ul style="list-style-type: none"> <li>• sale of accounts or chattel paper.</li> <li>• pledge, assignment, chattel mortgage, chattel trust, trusts deed, factors lien, conditional sale, trust receipt, other lien or title retention device and lease or consignment intended as security</li> </ul>	<p><i>Inclusions</i></p> <p>interest created by:</p> <ul style="list-style-type: none"> <li>• chattel mortgage, conditional sale, equipment trust, debenture, floating charge, pledge, trust indenture or trust receipt, and assignment, lease or consignment which secures payment or performance of obligation</li> <li>• transfer of account or chattel paper even though transfer may not secure payment or performance of obligation</li> </ul>	<p><i>Inclusions</i></p> <p>lien &amp; statutory charge</p> <p>interest created by:</p> <ul style="list-style-type: none"> <li>• hire purchase agreement</li> <li>• interest of factor in book debt</li> <li>• retention of title device</li> <li>• consignment</li> <li>• lease for more than 1 year</li> </ul>	<p><i>Inclusions</i></p> <p>fixed or floating charge</p> <p>interest created by:</p> <ul style="list-style-type: none"> <li>• chattel mortgage, conditional sale agreement, hire purchase agreement, pledge, security trust deed, trust receipt, assignment which secures payment or performance of obligation</li> <li>• transfer of accounts receivable or chattel paper</li> <li>• commercial consignment</li> <li>• lease for more than 1 year</li> </ul>	<p><i>Inclusions</i></p> <p>interest created by:</p> <ul style="list-style-type: none"> <li>• hire purchase and conditional sale agreement</li> <li>• transfer of claim under life insurance policy</li> <li>• transfer of interest in trust estate in relation to borrowing for private and personal purposes</li> <li>• retention of title device</li> <li>• lease for 3 years or more (except for purposes of rights and remedies on default)</li> </ul>

<b>UCC Art 9</b>	<b>Ontario</b>	<b>Australia</b>	<b>New Zealand</b>	<b>UK (Diamond Report)</b>
<p><i>Exclusions</i></p> <p>landlord's lien</p> <p>statutory lien or lien given by other rule of law for services or materials</p> <p>security interest subject to any statute to extent that statute governs</p> <p>interest created by:</p> <ul style="list-style-type: none"> <li>• transfer of claim for wages, salary or other compensation of employee</li> <li>• transfer of any claim arising out of a tort, deposit, savings passbook or like account</li> </ul>	<p><i>Exclusions</i></p> <p>lien (except lien by judicial process and artisan's lien)</p> <p>interest created by:</p> <ul style="list-style-type: none"> <li>• deemed trust arising under statute</li> <li>• transfer of claim under insurance policy</li> <li>• transaction under Pawnbrokers Act 1980</li> <li>• creation or assignment of interest in real property other than interest in fixture or assignment of right to payment under mortgage, charge or lease without transfer of assignor's "real" interest</li> </ul>	<p><i>Exclusions</i></p> <p>maritime lien or other charge over ship</p> <p>fixtures</p> <p>interest created by:</p> <ul style="list-style-type: none"> <li>• transfer of bill of lading</li> <li>• transfer of document of title</li> <li>• transfer of interest of lessor or a unit of accommodation or caravan, houseboat or mobile home in money held as bond for performance</li> </ul>	<p><i>Exclusions</i></p> <p>lien or charge</p> <p>interest created by:</p> <ul style="list-style-type: none"> <li>• transfer of bill of lading unless security intended</li> <li>• transfer of claim under insurance policy</li> <li>• transfer of claim under to payment under contract to delegate</li> <li>• creation or transfer of interest in land</li> <li>• assignment of accounts receivable for collection only</li> </ul>	<p><i>Exclusion</i></p> <p>lien</p>

UCC Art 9	Ontario	Australia	New Zealand	UK (Diamond Report)
<ul style="list-style-type: none"> <li>• sale of accounts, contract rights or chattel paper as part of sale of business out of which they arose or assignment of accounts contract rights or chattel paper for collection only or transfer of contract right to delegate or transfer of single account in satisfaction of antecedent debt</li> <li>• transfer of interest or claim under policy of insurance</li> <li>• transfer of rights represented by a judgement unless judgement on a collateral</li> <li>• right of set-off</li>   <li>creation or transfer of interest in or lien on real estate</li> </ul>	<ul style="list-style-type: none"> <li>• assignment for general benefit of creditors</li> <li>• sale of accounts or chattel paper as part of transaction to which Bulk Sales Act applies</li>   <li>• assignment of accounts for collection only</li> <li>• assignment of unearned right to payment to assignee who is to perform assignor's contract</li> </ul>		<ul style="list-style-type: none"> <li>• assignment for general benefit of creditors of assignor</li> <li>• sale of accounts receivable or chattel paper as part of sale of business out of which they arose unless vendor remains in apparent control after sale</li>   <li>• transfer of right to damages in tort</li> <li>• Transfer or assignment or mortgage of ship registered under statute</li> <li>• Transfer of right to payment arising in connection with interest in land unless security intended</li> </ul>	

## CREATION & REGISTRATION

UCC Art 9	Ontario	Australia	New Zealand	UK (Diamond Report)
<i>Creation</i>	<i>Creation</i>	<i>Creation</i>	<i>Creation</i>	<i>Creation</i>
Non-possessory security interest must be created in writing by security agreement which describes the collateral	Non-possessory security interest need not be created in writing to be enforceable against debtor. But must be created in writing to be enforceable against third party; such writing must sufficiently identify collateral	General law determines validity and enforceability	Non-possessory security interest need not be created in writing to be enforceable against debtor. But must be created in writing which sufficiently identifies collateral to be enforceable against third parties	Non-possessory interest must be created in writing or be evidenced by writing which sufficiently identifies collateral and indicates, whether expressly or by implication, that creditor is to have interest
Possessory security interest may be created orally	Possessory interest may be created orally		Possessory interest may be created orally	Possessory interest may be created orally
Security interest <i>attaches</i> when	Security interest <i>attaches</i> when		Security interest <i>attaches</i> when	Security interest <i>attaches</i> when
<ul style="list-style-type: none"> <li>• security agreement has been signed or creditor has taken possession of collateral</li> <li>• creditor has given valuable consideration</li> <li>• debtor has acquired rights in collateral</li> </ul>	<ul style="list-style-type: none"> <li>• security agreement has been signed or creditor has taken possession of collateral</li> <li>• creditor has given valuable consideration</li> <li>• debtor has acquired rights in collateral</li> </ul>		<ul style="list-style-type: none"> <li>• security agreement has been signed or creditor has taken possession of collateral</li> <li>• creditor has given valuable consideration</li> <li>• debtor has acquired rights in collateral</li> </ul>	<ul style="list-style-type: none"> <li>• security agreement has been signed or creditor has taken possession of collateral</li> <li>• creditor has given valuable consideration</li> <li>• debtor has acquired rights in collateral</li> </ul>

<b>UCC Art 9</b>	<b>Ontario</b>	<b>Australia</b>	<b>New Zealand</b>	<b>UK (Diamond Report)</b>
<p><i>Registration</i></p> <p>Purchase of money security interest in consumer goods (other than motor vehicles), interest created by assignment of beneficial interests in family trust, a collecting bank's security interest, interests created by isolated assignment of accounts or assignment for benefit of creditors do not require perfection by filing</p> <p>Has two effects</p> <ul style="list-style-type: none"> <li>• (in case of non-possessory interest) perfects the security interest, ie. makes it enforceable against third parties, including trustee in bankruptcy</li> </ul> <p>Possessory interest need not but may be perfected by registration unless incapable of</p>	<p><i>Registration</i></p> <p>Has two effects</p> <ul style="list-style-type: none"> <li>• (in case of non-possessory interest) perfects the security interest, ie. makes it enforceable against third Parties</li> </ul> <p>Possessory interest perfected by taking possession but may be perfected by</p>	<p><i>Registration</i></p> <p>Has only one effect</p>	<p><i>Registration</i></p> <p>Has two effects</p> <ul style="list-style-type: none"> <li>• (in case of non-possessory interest) perfects security interest, ie. makes it enforceable against third parties</li> </ul> <p>Possessory interest perfected by taking possession and does not require perfection</p>	<p><i>Registration</i></p> <p>Security interest in consumer goods (other than motor vehicles, caravans, trailers and vessels not, registered under Merchant Shipping Act) not registrable</p> <p>Has two effects</p> <ul style="list-style-type: none"> <li>• (in case of non-possessory interest) perfects security interest, ie. makes it enforceable against third parties</li> </ul> <p>Possessory interest perfected by taking possession registration necessary</p>



UCC Art 9	Ontario	Australia	New Zealand	UK (Diamond Report)
<p>being so perfected as with negotiable instruments</p> <ul style="list-style-type: none"> <li>determines priorities between competing security interests</li> </ul>	<p>registration registration not; necessary if creditor releases goods temporarily</p> <ul style="list-style-type: none"> <li>determines priorities between competing security interests</li> </ul>	<ul style="list-style-type: none"> <li>determines priority</li> <li>Does not affect floating charge</li> </ul>	<p>by filing; registration not necessary if creditor releases goods temporarily</p> <ul style="list-style-type: none"> <li>determines priorities between competing security interests</li> </ul>	<p>if creditor releases goods temporarily to custody of debtor</p> <ul style="list-style-type: none"> <li>determines priorities between competing security interests</li> </ul>

<b>UCC Art 9</b>	<b>Ontario</b>	<b>Australia</b>	<b>New Zealand</b>	<b>UK (Diamond Report)</b>
<i>Scheme</i>	<i>Scheme</i>	<i>Scheme</i>	<i>Scheme</i>	<i>Scheme</i>
File financing statement before security agreement	File financing statement before or after security agreement unless collateral is consumer goods	File financing statement before or after security agreement	File financing statement before or after security agreement	File financing statement before or after security agreement
No time limit for filing	No time limit	No time limit	No time limit	21-day limit- financing statment does not protect interest created more than21 days before filing if insolvency within 12 months of date of filing
Duration	Duration	Duration	Duration	Duration
5 years and renewable	Parties specify	Parties specify(apparently)	Parties specify	Parties specify

## PRIORITIES

UCC Art 9	Ontario	Australia	New Zealand	UK (Diamond Report)
<p>Priorities depend on date of perfection or filing</p>	<p>Priorities depend on date of perfection or filing</p>	<p>Priorities depend on date of perfection or filing</p> <ul style="list-style-type: none"> <li>• Asset indexed interest prevails over Name indexed interest</li> <li>• Court may vary priorities where fraud</li> </ul>	<p>Priorities depend on date of perfection or filing</p>	<p>Priorities depend on date of perfection or filing</p>
<p><i>General Rules (Possessory)</i></p> <ul style="list-style-type: none"> <li>• Prevails over non- possessory except those registered earlier</li> </ul>	<p><i>General Rules (Possessory)</i></p> <ul style="list-style-type: none"> <li>• Prevails over non- possessory except those registered earlier</li> </ul>	<p><i>General Rules (Possessory)</i></p> <ul style="list-style-type: none"> <li>• Prevails over non- possessory except those registered earlier</li> </ul>	<p><i>General Rules (Possessory)</i></p> <ul style="list-style-type: none"> <li>• Prevails over non-possessory except those registered earlier</li> </ul>	<p><i>General Rules (Possessory)</i></p> <ul style="list-style-type: none"> <li>• Prevails over non- possessory except those registered earlier</li> </ul>
<p><i>General Rules (Non-Possessory)</i></p> <ul style="list-style-type: none"> <li>• registered interest prevails over unregistered</li> <li>• interest registered earlier in time prevails over later in time</li> <li>• in competition between unregistered interests, that which attaches earlier prevails</li> </ul>	<p><i>General Rules (Non-Possessory)</i></p> <ul style="list-style-type: none"> <li>• registered interest prevails over unregistered</li> <li>• interest earlier in time prevails over later in time</li> <li>• in competition between unregistered interests, that which attaches earlier prevails</li> </ul>	<p><i>General Rules (Non-Possessory)</i></p> <ul style="list-style-type: none"> <li>• registered interest prevails over unregistered</li> <li>• interest earlier in time prevails over later in time</li> <li>• in competition between unregistered interests, that for which value given earlier prevails</li> </ul>	<p><i>General Rules (Non-Possessory)</i></p> <ul style="list-style-type: none"> <li>• registered interest prevails over unregistered</li> <li>• interest earlier in time prevails over later in time</li> <li>• in competition between unregistered interests, that which attaches earlier prevails</li> </ul>	<p><i>General Rules (Non-Possessory)</i></p> <ul style="list-style-type: none"> <li>• registered interest prevails over unregistered</li> <li>• earlier in time prevails over later</li> <li>• in competition between unregistered interests, that which attaches earlier prevails</li> </ul>

<b>UCC Art 9</b>	<b>Ontario</b>	<b>Australia</b>	<b>New Zealand</b>	<b>UK (Diamond Report)</b>
<p><i>Special Rules</i></p> <ul style="list-style-type: none"> <li>• purchase money security interest in property other than inventory has super priority, ie. prevails against all other interests whether registered earlier or later if perfected within 10 days after debtor obtains possession</li> <li>• purchase money security interest in inventory has super priority if secured party notifies holders of prior perfected interests within 5 years before debtor receives possession of inventory</li> </ul>	<p><i>Special Rules</i></p> <ul style="list-style-type: none"> <li>• purchase money security interest in property other than inventory or proceeds has super priority <ul style="list-style-type: none"> <li>if in case of tangible property, perfected before or within 10 days before or within 10 days after debtor obtains possession</li> <li>if in case of intangible property, perfected before or within 10 days after attachment</li> </ul> </li> <li>• purchase money security interest in inventory or its proceeds has super priority <ul style="list-style-type: none"> <li>if perfected at time debtor obtains possession of inventory if before debtor</li> </ul> </li> </ul>	<p><i>Special Rules</i></p> <ul style="list-style-type: none"> <li>• purchase money security interest has super priority, ie. prevails over all interests, even those registered earlier provided notice filed <ul style="list-style-type: none"> <li>in case of tangible property, before property delivered to debtor</li> <li>in case of intangible property within 10 days after security transaction</li> </ul> </li> </ul>	<p><i>Special Rules</i></p> <ul style="list-style-type: none"> <li>• purchase money security interest in collateral other than inventory has super priority <ul style="list-style-type: none"> <li>if perfected not later than 10 working days after debtor obtains possession</li> </ul> </li> <li>• purchase money security interest in inventory super priority <ul style="list-style-type: none"> <li>if perfected before debtor obtains possession and notice given to holders of prior registered interests</li> </ul> </li> </ul>	<p><i>Special Rules</i></p> <ul style="list-style-type: none"> <li>• purchase money security interest has super priority, whether or not inventory or other collateral <ul style="list-style-type: none"> <li>if perfected before or within 10 days after debtor obtains possession</li> </ul> </li> </ul>

UCC Art 9	Ontario	Australia	New Zealand	UK (Diamond Report)
<ul style="list-style-type: none"> <li>• further advance - same as for principal amount</li> <li>• lien - prevails over perfected security interest</li> </ul>	<p>obtains possession, creditor gives notice to all other secured parties</p> <ul style="list-style-type: none"> <li>• further advance - same as for principal amount if for reasonable expenses in preserving collateral or secured party bound to make advance</li> <li>• lien - has priority over perfected security interest</li> </ul>	<ul style="list-style-type: none"> <li>• security interest arising by operation of law <ul style="list-style-type: none"> <li>if public, has super priority</li> <li>if private, has priority over interests registered later</li> </ul> </li> <li>• further advance - has same priority as for principal amount</li> </ul>	<ul style="list-style-type: none"> <li>• where competing purchase money security interests <ul style="list-style-type: none"> <li>inventory <ul style="list-style-type: none"> <li>that perfected at date debtor first obtains possession of collateral prevails</li> </ul> </li> <li>equipment <ul style="list-style-type: none"> <li>that perfected not later than 10 days after debtor first obtains possession prevails</li> </ul> </li> <li>security interest in accounts receivables given for new value and perfected before purchase money security interest is perfected prevails over latter</li> </ul> </li> <li>• lien - prevails over perfected security interest</li> </ul>	

UCC Art 9	Ontario	Australia	New Zealand	UK (Diamond Report)
<ul style="list-style-type: none"> <li>• goods which become fixtures - encumbrancer or owner of real property prevails unless <ul style="list-style-type: none"> <li>purchase money security interest which is perfected within short period of goods becoming fixtures, and interest of encumbrancer or arises when goods become fixtures, and debtor has interest of record in real state or is in possession; or fixtures are readily removable; or encumbrancer or owner consents in writing to security interest</li> </ul> </li> <li>• accessions – security interest attached before accession prevails over all prior interests</li> </ul>	<ul style="list-style-type: none"> <li>• goods which become fixtures - prevails over claim of person in real property</li> <li>• accessioned goods - security interest which attached before accession has priority over the claim in respect of the whole</li> </ul>	<ul style="list-style-type: none"> <li>• goods which become fixtures - governed by land law</li> <li>• accessioned goods- security interest in component is security interest in the whole</li> </ul>	<ul style="list-style-type: none"> <li>• goods which become fixtures - security interest prevails if removable</li> <li>• accessioned goods - prevails over interest in the whole</li> </ul>	<ul style="list-style-type: none"> <li>• goods which become fixtures - security interest prevails over claim in real property</li> <li>• floating charge priority begins from date of filing, not date of crystallization</li> </ul>

UCC Art 9	Ontario	Australia	New Zealand	UK (Diamond Report)
<ul style="list-style-type: none"> <li>• commingled and processed goods- security interest in part continues in whole</li>   <li>• returned or repossessed goods - security interest revives</li>   <li>• proceeds - security interest continues</li> </ul>	<ul style="list-style-type: none"> <li>• commingled and processed goods - security interests rank equally</li>   <li>• deemed trust- prevails over interest in account or inventory (except purchase money security)</li>   <li>• returned or repossessed goods-security interest revives</li>   <li>• proceeds - security interest continues</li> </ul>	<ul style="list-style-type: none"> <li>• commingled and processed goods security interest in part - is security interest in the whole</li>   <li>• returned or repossessed goods - security interest revives</li>   <li>• proceeds - security interest continues</li> </ul>	<ul style="list-style-type: none"> <li>• commingled and processed goods security interests rank equally</li>   <li>• returned or repossessed goods - security interest revives</li>   <li>• proceeds – security interest continues</li> </ul>	<ul style="list-style-type: none"> <li>• proceeds - security interest continues</li> </ul>

## PURCHASERS

UCC Art 9	Ontario	Australia	New Zealand	UK (Diamond Report)
<p><b>Sale in ordinary course</b></p> <p><i>Goods</i></p> <ul style="list-style-type: none"> <li>• Purchaser takes free of security interests, regardless of knowledge unless knows of breach of security agreement</li> </ul> <p>Protection is against interests created by immediate seller, not prior interests</p>	<p><b>Sale in ordinary course</b></p> <p><i>Goods</i></p> <ul style="list-style-type: none"> <li>• Purchaser takes free of security interests, regardless of knowledge unless knows of breach of security agreement</li> </ul> <p>Protection is against interests created by immediate seller, not prior interests</p>	<p><b>Sale in ordinary course</b></p> <p><i>Goods</i></p> <ul style="list-style-type: none"> <li>• Purchaser takes free, regardless of knowledge unless intends to defraud</li> </ul> <p>Prior interests not created by immediate seller also defeated</p>	<p><b>Sale in ordinary course</b></p> <p><i>Goods</i></p> <ul style="list-style-type: none"> <li>• Purchaser takes free of security interests, regardless of knowledge unless knows of breach of security agreement</li> </ul> <p>Protection is against interests created by immediate seller, not prior interests</p>	<p><b>Sale in ordinary course</b></p> <p><i>Goods</i></p> <ul style="list-style-type: none"> <li>• Purchaser takes free, regardless of knowledge</li> </ul> <p>Prior interests not created by immediate seller also defeated</p>



UCC Art 9	Ontario	Australia	New Zealand	UK (Diamond Report)
<p><b>Sale in ordinary course</b></p> <p><i>Consumer goods</i></p> <ul style="list-style-type: none"> <li>Purchaser takes free if no knowledge of security interest and purchase prior to filing of interest</li> <li>Purchaser takes free to extent security interest for future advance made after purchase or more than 45 days after purchase</li> </ul>	<p><b>Sale in ordinary course</b></p> <p><i>Motor Vehicles</i></p> <ul style="list-style-type: none"> <li>Purchaser takes free unless vehicle registration number in financing statement or knows of breach of security agreement</li> </ul>	<p><b>Sale in ordinary course</b></p> <p><i>Non-possessory interest</i></p> <ul style="list-style-type: none"> <li>Purchaser takes subject to perfected interest, unless purchaser has made reasonable inquiries, yet failed to discover interest</li> </ul> <p><i>Possessory interest</i></p> <ul style="list-style-type: none"> <li>Purchaser takes subject to perfected interest</li> </ul>	<p><b>Sale in ordinary course</b></p> <p><i>General</i></p> <ul style="list-style-type: none"> <li>Purchaser for value takes free if no knowledge and before perfection</li> </ul> <p><i>Consumer goods (under certain price)</i></p> <ul style="list-style-type: none"> <li>Purchaser for value takes free if no knowledge</li> </ul> <p><i>Equipment</i></p> <ul style="list-style-type: none"> <li>Purchaser takes free if no knowledge and goods should have been but were not described in financing statement by serial number</li> </ul>	<p><b>Sale in ordinary course</b></p> <p><i>Consumer goods</i></p> <ul style="list-style-type: none"> <li>No special rule because security interest not registrable</li> </ul> <p><i>Motor Vehicle</i></p> <ul style="list-style-type: none"> <li>Private purchaser (not motor traders and finance houses) takes free if no knowledge</li> </ul>

<b>UCC Art 9</b>	<b>Ontario</b>	<b>Australia</b>	<b>New Zealand</b>	<b>UK (Diamond Report)</b>
<b>Transfer of negotiable collateral</b> <ul style="list-style-type: none"> <li>• Purchaser with no knowledge takes free of security interest whether or not seller selling in ordinary course of business</li> <li>• Art 9 does not affect rights of holder in due course of negotiable instrument or bona fide purchaser of security</li> </ul>                          <ul style="list-style-type: none"> <li>• Purchaser of chattel paper for new value who takes possession has priority over security interest if no knowledge</li> </ul>	<b>Transfer of negotiable collateral</b> <ul style="list-style-type: none"> <li>• Holder in due course of negotiable instrument or transferee of money from debtor outside the scheme</li> </ul>                          <ul style="list-style-type: none"> <li>• Purchaser of chattel paper for new value who takes possession has priority over security interest if no knowledge</li> </ul>		<b>Transfer of negotiable collateral</b> <ul style="list-style-type: none"> <li>• Holder of negotiable document of title to goods for value has priority over security interest in document if no Knowledge</li> <li>• Holder of money takes free if no knowledge or if holder for value, regardless of knowledge</li> <li>• Purchaser of chattel paper for value who takes possession in ordinary course of business has priority over security interest in chattel paper if no knowledge at time of taking possession</li> </ul>	

UCC Art 9	Ontario	Australia	New Zealand	UK (Diamond Report)
<p>security interest attached to proceeds of inventory regardless of knowledge</p>	<p>security interest attached to proceeds of inventory regardless of knowledge</p> <ul style="list-style-type: none"> <li>• Purchaser of instrument or negotiable document of title for value who takes possession has priority over security interest in instrument or document if no knowledge</li> <li>• Bona fide purchaser of security who takes possession has priority over security interest</li> <li>• Purchaser of security in ordinary course of business and takes possession has priority over security interest regardless of knowledge unless knows of breach of security agreement</li> </ul>		<p>security interest attached to proceeds of inventory, regardless of knowledge at time of possession</p> <ul style="list-style-type: none"> <li>• Purchaser of negotiable instrument for new value has priority over security interest in instrument if no knowledge and takes possession</li> <li>• Creditor receiving negotiable instrument drawn by debtor as payment for debt has priority over security interest in instrument</li> </ul>	

# ***APPENDIX 11***

## **WRITTEN SUBMISSIONS OF:**

- **ASSOCIATION OF BANKS IN SINGAPORE**
- **ASSOCIATION OF HIRE PURCHASE & FINANCE COMPANIES**
- **CONSUMERS ASSOCIATION OF SINGAPORE**
- **FINANCE HOUSES ASSOCIATION OF SINGAPORE**
- **LEASING ASSOCIATION OF SINGAPORE**
- **MONETARY AUTHORITY OF SINGAPORE (BANKING & FINANCIAL INSTITUTIONS GROUP)**
- **MONETARY AUTHORITY OF SINGAPORE (INSURANCE COMMISSIONER'S DEPARTMENT)**
- **REGISTRY OF COMPANIES & BUSINESSES**

10 Shenton Way # 12-08  
MAS Building Singapore 0207  
Tel: 2244300 Telex: RS 29291  
ASSNRK

**CONFIDENTIAL**

**ABS**

19 April 1996

Ms Mavis Chionh  
The Secretary  
Law Reform Committee  
Singapore Academy of Law  
Third Level, City Hall Building  
St Andrew's Road  
Singapore 178957

Dear Ms Chionh

**RESPONSE TO THE INTERIM REPORT  
ON THE BILLS OF SALE ACT**

The Association of Banks in Singapore (ABS) agrees with the Sub-Committee (the Committee) that there is a need to reform the Bills of Sale Act (the Act). The Act has seldom been used because of its complexities, the need to comply strictly with the statutory form and the serious consequences of non-compliance. Reforming the law would enhance the ability of our members to take security over goods and this would promote goods financing. Given the time constraints, we set out below our immediate response to your proposals.

**2. Exclusions**

a. Our members have experienced difficulty in taking goods as security under the existing law. It does not appear that the members have experienced similar problems in taking security over choses in action. Perhaps, the Committee should consider narrowing the scope of the new legislation to cover only goods and not choses in action, in the first instance.

b. However, should the Committee decide to include choses in action in the new legislation, we request the following exclusions i.e.,

- (i) **All Bank Deposits.** This is because banks cannot be in the position of having more than one possible claim for funds. This may arise where the bank customer claims that the security interest entered into the register has been discharged and the bank is unable to receive confirmation from the creditor of the same.
- (ii) **Collateral Security Interests over Securities (including shares).** There is already a separate regime for the registration of security over SES-listed shares in the Companies Act and we see no need for a separate register. It should also be noted that the Register under Section 130N is not accessible to the public and affords very limited access for inspection. There is also no need in respect of the non-listed shares. S131 of the Companies Act already requires Forms 33 and 34 to be filed where there is a charge over the shares of a subsidiary.

- (iii) **Security Interests over Choses in Action relating to Immovable Property.** In so far as the subject-matter of the choses in action may already be afforded protection under the Land Titles Act and/or the Registration of Deeds Act, we do not think that there is need in them for further registration in your proposed system.
- (iv) **Insurance policies, bankers' guarantees, unit trusts and Singapore Government Securities:** As banks appear to have little difficulty in taking collateral security in such choses in action, they see no need for the application of your proposed system.

3. **Monetary Limit**

It is proposed that the monetary limit be set in the region of \$50,000.00 to \$100,000.00 as it could clutter the register with respect to security interests of value below \$50,000.00.

4. **Real Time Cross Link Register**

The ABS agrees with the concept of a cross link register with the ROC Registry. We propose that a Real Time Register can be implemented into the system. This would allow the banks to obtain the most updated information on the security interest to be taken. There should not be a 7-day time lag as experienced in the current ROC searches.

5. **Costs**

We note that it is imperative that implementation costs be kept to a minimum if the new regime is to be attractive. The ABS feels that the registration costs for lodging the financing statements should not be more than that applicable to Forms 33 and 34 (currently \$3.50 per set).

6. **Duration of Registration**

It is unnecessary and increases costs to have annual renewal of registration particulars. Items lodged under the financing statement should be valid for the period specified in the underlying transaction (i.e., if it is for a specified period, that period or if it is indefinite, indefinitely).

7. **Further Consultation**

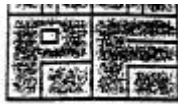
The ABS thanks the Committee for consulting it at this stage of the review and hopes that it can share its views on the reform of the Act in the subsequent stages of review as this proposed change in law would inevitably affect the whole banking and finance industry as well as affect a wide spectrum of the population.

Yours sincerely



Ong-Ang Ai Boon, Mrs

Director



# THE ASSOCIATION OF HIRE PURCHASE & FINANCE COMPANIES

融業公會  
坡租購及

9 LORONG 29, GEYLANG ROAD #05-02, SINGAPORE 1438. TEL: 7414733 FAX: 7415660

3rd May 1996

The Law Reform Committee of the Singapore Academy of Law  
The Sub-Committee to review the Bill of Sale Act  
Singapore Academy of Law  
3rd Level, City Hall Building  
St. Andrew's Road  
Singapore 178957.

BY HAND

Dear Sirs,

## REVIEW OF THE BILLS OF SALE ACT

This has reference to the meeting held on the 19 March 1996 on the recommendations made in the Interim Report.

Whilst the proposed recommendations to the repeal of the Bills of Sale Act and its replacement by a personal property securities law is timely, our Association has raised concerns on the following points:

- a) The concept of hire-purchase financing is such that the registered owner never has legal title to the motor-vehicle until he has exercised the option to purchase. This concept is even recognized by Statutes (*that is: The Road Traffic Act*).
- b) The protection accorded by the proposed Personal Property Securities Act ("*the proposed Act*"), by its very name, cannot include the registered owners of motor-vehicles under hire purchase financing as the registered owners are not the legal owners.
- c) *The proposed Act* refers to a Debtor and the creation of a security interest (*that is: attachment*) in personal property. It is established that a hire-purchase agreement is not a moneylending transaction as in essence it is a contract for the delivery of goods on hire under which the hirer is granted an option to purchase the goods which he may or may not exercise. Consequently, until such time when he has exercised the option to purchase he has no proprietary interest in the goods and the goods are not his personal property. The goods are therefore not his personal property and cannot be attached in any manner thereby creating a security interest. Neither can he be classified as a debtor in the legal sense of the word.



*The proposed Act* is relevant where the borrower is a legal owner of the goods or thing held as security, whether possession based or otherwise. This basic tenet in *the proposed Act* runs contrary to the concept of hire-purchase financing.

For the reasons set out above, the Association feels that goods comprised in hire-purchase agreements should be excluded from *the proposed Act*.

However, in the event that the Committee is prepared to include hire-purchase agreements in *the proposed Act*, the Association wishes the Committee to address the following concerns:-

- i) that title to the goods under hire-purchase does not pass if the sale of the said goods are made without the consent of the legal owners;
- ii) that the lodgement of the interest of the legal owners be all- encompassing: *that is:-* regardless of whether any searches are made at the Registry upon the sale of the goods under hire-purchase to and from any parties whether individual or corporate, or whether in the course of business or otherwise, title shall not pass **unless** the sale is made with the written consent of the legal owners;
- iii) that the LTA (insofar as motor-vehicles are concerned) be statutorily bound to make the appropriate searches at the proposed Registry before they issue any duplicate vehicle log cards.

We trust that the Committee may take the above into account.

Yours faithfully,

  
Ong Sing Pang  
Chairman



# CONSUMERS ASSOCIATION OF SINGAPORE

## 新加坡消费者协会

சின்காஸ்டியூர் பவன்க்குறமர்ச்சன் சங்கடம்  
PE RSATUAN PE NGGUNA-PENGGUNA SINGAPURA  
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The Secretary  
Law Reform Communittee  
Singapore Academy of Law  
Third Level, City Hall  
St. Andrew's Road  
Singapore 178957

VIA FAX 3344940

19 April 1996

### **INTERIM REPORT ON THE REVIEW OF THE BILL OF SALE ACT**

We refer to your letter dated 8 March 1996 and we thank you for giving us the opportunity to attend the presentation on the above mentioned matter held on 19 March 1996.

The Consumers Association takes comfort in the assurance given at the said presentation that the registration of personal property (the "RPP") recommended by the Interim Report is not intended to apply to consumers and their purchase of consumer goods. We agree with that sentiment and our comments herein will be directed towards that objective and will be restricted to security over chattels only.

1. Two concepts in the Interim Report have been advanced as Indirectly achieving the said objective:
  - (1) the concept of Specified Value whose primary purpose is to prevent the RPP from being "cluttered up"; and
  - (2) the concept of "ordinary course of the debtor's trade or business" which applies to retailers only and does not apply to sale of 2nd hand consumer goods by non traders.

### **EXPRESS EXEMPTION FOR CONSUMER GOODS**

2. However it appears that many Commonwealth jurisdictions referred to in the Schedule to the Interim Report, have or are looking at express provisions for the consumer (purchasing consumer goods for personal, family or household use) to take free of security interests irrespective of the value thereof or whether the purchase was made in the ordinary course of trade of the seller.

3. The rationale for such a provision is that the consumer cannot be expected to make a search of the RPP everytime he makes a purchase.
4. It is true that protection of the consumer also restricts his access to credit to a certain extent. The fundamental question is whether the RPP should facilitate the creation of security over such consumer goods, and whether the consumer should have greater access to credit.
5. Firstly, take the hypothetical situation of a house owner taking a loan on the security of all electrical and mechanical equipment and machinery in his home. At present Finance Companies give unsecured loans of up to \$5,000.00 quite readily and Banks give easy credit of up to \$30,000.00 to individuals without much hassle. If the RPP caters to this market such financiers may find household goods a ready source of security for their otherwise unsecured loans. This is advantageous to financiers but encumbers the consumer's ownership and enjoyment of what are usually rapidly deteriorating assets.
6. Secondly, the Consumers Association submits that our society is already highly geared financially. The present policy of the Monetary Authority of Singapore is to rein in the rapid increase in credit and consumption/credit spending. Singapore's prosperity is built not on high credit and consumption, but on high rates of saving. There is no need to destroy the habits of thrift and frugality and to encourage (intentionally or otherwise) the creation of more credit by facilitating the creation of security over household and other consumer goods.
7. The Consumers Association also advocates that (with the exception of motor vehicles) there should be express provision that the consumer as defined above taxes free of the security interest notwithstanding registration under the RPP.

### **SPECIFIED VALUE**

8. If the consumer is protected by express provision, the sole purpose of the Specified Value then is to prevent the RPP from being cluttered up. A financier may find it useful to register a security over the consumer goods notwithstanding that the financier may lose his security in the unlikely event that the security is sold by one consumer to another. This is because registration may be effective against bankruptcies or execution proceedings. Hence the specified value concept must remain even if consumer goods are exempted from registration or are outside the purpose of the Act.
9. The Interim Report is silent on whether the Specified Value is the value of individual consumer goods or the aggregate value where the security comprises several consumer goods. If the sole purpose of the Specified Value is as stated at paragraph 8 above, the RPP should probably be concerned only with the aggregate value of the security and the aggregate Specified Value.
10. The Consumers Association conducted a survey of consumer prices in 1995 which shows that :
  - (a) market value of individual consumer luxury goods (such as diamond rings or rolex watches) is in the region of \$10,000/- to \$20,000/-;

- (b) individual non-luxury consumer goods (such as computers, television or high-fidelity sound systems) can cost up to \$5,000/- and
  - (c) market value of a basket of several items from (a) and (b) is in the region of \$30,000/-.
11. The Consumers Association advocates that the aggregate Specified Value should be \$30,000/-. This ties in with the present availability of unsecured easy credit of \$30,000/- offered by the Banks. The aggregate Specified Value of \$30,000/- will ensure that Banks are not tempted to further liberalise their easy credit on the security of a basket of consumer goods.
12. However if the proposal for specific protection of consumer purchases (referred to at paragraph 7 above) is not accepted, the Consumers Association advocates that :
- (a) there should be an individual Specified Value applicable to individual consumer goods. This is because a consumer would decide whether to conduct a RPP search based on the value of the individual goods he is purchasing and not on the aggregate value of all the goods in the sellers' household or office; and
  - (b) the consumer takes free of the security interest if the individual value of his purchase is less than the individual Specified Value (notwithstanding registration thereof where the aggregate value is higher than \$30,000.00); and
  - (c) the individual Specified Value should be \$30,000/-.

### **ORDINARY COURSE OF TRADE**

13. The concept “ordinary course of trade or business” has attracted much litigation and judicial comment in such diverse fields as insolvency laws, insurance laws, banking laws and taxation laws. Presumably the purpose of this concept is to facilitate transactions between traders and businesses. The Consumers Association has little experience of such matters to contribute. From the law reports, however, it appears that whether or not goods are sold “in the ordinary course of trade or business” is not always clear.
14. If the consumer is protected by specific provisions (referred to at paragraph 7 above) the query we have is whether the purchaser will take free of the secured creditor's interest where the security is sold from trader A to trader B ("1st Sale") and finally to the purchaser (“2nd Sale”) for private consumption (our "2nd hypothetical example").
15. Where the 1st Sale is conducted in the ordinary course of A’s trade, both trader B and the consumer-purchaser takes free of the security. This appears to be also the position under the current Bills of Sale Act.
16. Where the 1st Sale is not conducted in the ordinary course of A's trade, difficulties may arise.
17. Presumably the RPP is a register/index based on the name of the owners of the chattel, rather than the identity of the chattel itself. That is the case with the current Bills of Sale Act. With the exception of motor vehicles, a single serialised register of

chattels does not exist in Singapore (nor in any other country to our knowledge). Without such a register to identify the chattel, it may not be feasible to register a security based on the identity of the chattel rather than on the identity of the owner.

18. If so the purchasers in our 2nd hypothetical example will not be able to trace the previous owners of the chattel nor the security interest in favour of Trader A's financier.
19. The Consumers Association proposes that the purchaser should take free of the security interest regardless of the circumstances surrounding the transfer of property in the chattel from the previous owners (or any of them) (i.e. Trader A in our 2nd hypothetical example) to the intermediate seller (i.e. Trader B in our 2nd hypothetical example).
20. The financier's remedy is his recourse against Trader A and perhaps the proceeds of sale (if tracing is available) in the hands of Trader B.
21. The proposal set out at paragraph 19 above may be expressed to apply to all purchasers in defining the effect of purchasing from a trader in the "ordinary course of trade or business". If this is not acceptable, the Consumers Association advocates that this protection should be incorporated as part of the express provision protecting consumer purchases (referred to at paragraph 7 above)

Yours faithfully



Stephen Loke/Ng Yuen  
Chairman/Secretary  
Consumers Affairs Committee  
For and On Behalf of  
President, Consumers Association

c.c. Dr Toh See Kiat  
President  
CASE  
Fax : 5534637

c.c. Ms Tan Bee Lan  
Executive Director  
CASE  
Fax : 2706786



19 April 1996

Mrs Arfat Selvam  
Chairman  
Law Reform Sub-Committee on the  
Reform of the Bills of Sale Act  
c/o Singapore Academy of Law  
Third Level, City Hall Building  
St. Andrew's Road  
Singapore 178957

**BY HAND**

Dear Mdm

**RESPONSE TO THE INTERIM REPORT  
ON THE BILLS OF SALE ACT**

1. Thank you for inviting the Finance Houses Association of Singapore to comment on your interim report.

**2. Exclusions and Exceptions**

a. Our members feel that the scope of the new regime should be restricted to only goods and choses in action relating to goods. Our members have so far not encountered any problems in taking security over other choses in action. We thus see no need for a change in the law in regard to choses in action.

b. Even if the new regime generally covers choses in action, we propose that the following be excluded nevertheless.

(i) Collateral Security over Shares

There is currently a separate regime governing SES-listed shares under s130N of the Companies Act. We do not see any utility in having another regime which duplicates this ongoing in respect of shares.

Furthermore, we believe that the public sentiment is that information about shares held by the borrowers should be kept confidential. In this respect, we do not think that a public register which the public at large can inspect (unlike the s130N register) would be appropriate.

We also see no need for a scheme applying to non-SES-listed shares and consequently suggest the exclusion of shares entirely from the new regime.

(ii) Collateral Security over Choses in Action in regard to Immovable Property

Since interests in immovable property are already governed by the Land Titles Act and the Registration of Deeds Act, our members feel that these should be excluded. Since caveats can be filed in respect to the interests in immovable

property at the LTR/ROTD, there does not seem to be any need for another filing.

(iii) Collateral Security over Singapore-registered Vessels

Insofar as the Merchant Shipping Act 1995 provides for a registration of mortgages over such vessels, we see no need for a further inclusion under the new regime.

(iv) Factoring and Block Discounting

Our members have been dealing with factoring and block discounting under the present law and have not encountered any problems. We do not see a need to introduce a new regime in respect of these two transactions.

In any event, any registration/filing requirement under a new regime would create grave inconvenience to the industry. A generic definition of the invoices would not be practical as it is common practice for several financiers to have security over different invoices addressed to the same debtor. A specific definition would not be viable as the time frame between the receipt of the invoices and the financiers' disbursement of the funds is very short. Therefore, to include factoring and block discounting in the new regime would cause insurmountable inconvenience to the industry and it would commercially be a hindrance to our practice.

(v) Hire Purchase

The FHAS feels that since the title to the goods in a hire purchase transaction belongs to the financier rather than a hirer, a hire purchase is not a security interest and should therefore not be included in the regime.

### 3. **Monetary Limit**

Our members suggest that the monetary threshold for application of the new regime be set at \$50,000.00 or such higher figure as from time to time determined by the authorities. We do not think that a monetary value lower than \$50,000.00 would be efficient for the regime.

### 4. **Real Time Cross Link Register**

An automatic cross link register between the new regime and the ROC Registry would be essential. The register should operate on a real time basis so that the information obtained from the system can be updated. The register should not have a time lag of seven days as in the ROC search system.

### 5. **Costs**

Our members are concerned with the costs involved under the new regime. The FHAS opes that the Committee would agree that the costs for registration/filing should be kept to a minimum. This would render the regime more attractive to both the industry and the consumers. The FHAS suggests that the registration costs should be a fixed sum not exceeding that applicable to Forms 33 and 34 (\$35.00 per set at present). The opportunity should also be taken to remove or reduce stamp duty costs currently applicable.

### 6. **Registration System**

- a. The FHAS hopes that the security interest can be registered indefinitely or up to the specified maturity period of the subject matter secured.
- b. The FHAS suggests that the registration system would be more effective if the borrower and every prior registered financier are notified by the registry when a subsequent financier registers the same security interest.

**7. Further Consultation**

The FHAS hopes that it would be able to participate in the subsequent stages of the continuing consultative process. As the new regime is a comprehensive scheme covering a wide range of security, it would invariably affect a large proportion of the general public. We hope that the Committee would appreciate the mutual benefits for the Committee as well as the industry if the FHAS can share its concern and comments on the issue before the regime comes into force.

Yours faithfully



**KAU JEE CHU**  
Chairman





# LEASING ASSOCIATION OF SINGAPORE

2 Finlayson Green #15-04, Asia Insurance Building, Singapore 049247  
Tel: 2217379/2217509 Fax: 2219674

Our Ref: BOSO418/JL/ph

19 April 1996

The Secretary  
Law Reform Committee  
Singapore Academy of Law  
Third Level, City Hall  
St Andrew's Road  
Singapore 178957

Dear Sir

## INTERIM REPORT BY SUB-COMMITTEE ON BILLS OF SALE ACT

We refer to the above report and our feedback is as follows:-

We would like to propose that the following list of transactions be excluded as security interests under the Reformed Bills of Sale Act:

- a) collaterals over Singapore-registered vessels;
- b) Factoring, Block Discounting, Hire Purchase and Leases;
- d) choses in action excluding those relating to goods; and
- e) consumer goods which are less than SGD50,000.00.

We also strongly request that the proposed reformed bill does not require any annual renewal of the registration as is required under the current bill.

Yours sincerely

Joyce Low  
Chairman



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# Monetary Authority of Singapore

10, Shenton Way, MAS Building Singapore 0207  
Robinson Road P. O. Box 52, Singapore 9001  
Cables: MONETARY SINGAPORE. Telex: "ORCHID" RS 28174  
Facsimile: 2299491. Telephone: 2255577

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YOUR REF:

OUR REF:

DID:

DATE: 22 Apr 96

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Sub-Committee on the Bills of Sale Act  
c/o Singapore Academy of Law  
Third Level, City Hall Building  
St Andrew's Road  
Singapore 178957

Attn : Ms Mavis Chioh

Dear Madam

**FEEDBACK ON INTERIM REPORT OF SUB-COMMITTEE  
ON BILLS OF SALES ACT**

Please refer to your letter dated 20 March 1996 on the above matter.

2 The preliminary views of the MAS are that while MAS agrees in-principle with the reform of the law relating to personal property securities (PPS) as resently contained in the Bills of Sales Act ("the Act"), it should however, be confined to apply only to goods for the time being, and not be extended to apply to choses in action:-

- (a) until greater experience is gained on the new legislation; and
- (b) as it appears that banks have not encountered major difficulties in taking security over choses in action.

3 In addition, MAS requests that three specific types of transactions be excluded from the new legislation:

- (i) All bank deposits

We are of the view that bank deposits and securities over bank deposits should be excluded from the new legislation. The large number of deposits will clog up the PPS Register if they are all required to be registered.

- (ii) Collateral security interests over securities

Since there is already a comprehensive system for the maintenance and transfer of book-entry securities; and their assignment and charges as collateral security under the Companies Act, the PPS Register should not duplicate the Depository Register.

(iii) Security interests over choses in action relating to real property

Since the new legislation does not apply to real property transactions, this exclusion should also extend to choses in action involving such property.

4 MAS views with some concern the proposal to accord super-priority to purchase money security interests that add value to a business, as this may prejudice the legitimate interests of other creditors, especially floating chargees. We do not fully understand the rationale for according super-priority to such security interests and under what circumstances it should apply, and in particular, whether it should be made to apply only in situations of judicial management.

5 In addition, we are not sure about how super-priority in ordinary course of trade or business security interests will apply to securities dealers who may deal as principal or agent.

6 We have also referred a copy of your Interim Report to the Insurance Commissioners Department (ICD) for their views and comments. ICD will reply to the Sub-Committee directly.

7 The above are the preliminary views of MAS on the Sub-Committee's proposals for the reform of the Bills of Sales Act. We foresee that the reform of the law relating to personal property securities will not be a simple task in view of the tremendous and widespread ramifications of the proposed legislation. We will need to examine and discuss the proposals further and from time to time we will provide additional input where there is a need to do so, especially as the proposals become clearer.

8 In view of the likely impact of the new legislation for both creditors and borrowers, MAS would urge the Sub-Committee to proceed slowly with the introduction of the new legislation and to look at the experiences of countries which have adopted similar legislations to determine whether they have encountered any pitfalls and shortcomings, how these were resolved and how we can avoid them.

Yours faithfully



NG HENG FATT  
for DEPUTY MANAGING DIRECTOR  
BANKING & FINANCIAL INSTITUTIONS GROUP



Monetary Authority  
of Singapore

10 Shenlon way MAS Building, Singapore 079117

Rooftop Road P. O. Box 62, Singapore 900102

Cables: MONETARY SINGAPORE. Telex: 'ORCHID' R6 28174

Facsimile: 2299491. Telephone: 2255577

YOUR REF:

OUR REF: IC 046.1 V6

DID:

DATE: 22 May 96

Singapore Academy of Law  
Sub-Committee To Review Bills of Sale Act  
Third Level, City Hall Building  
St Andrew's Road  
Singapore 178957

**BY FAX**

Attn: Ms Mavis Chionh 7  
Secretary

**FEEDBACK ON INTERIM REPORT ON BILLS OF SALE ACT**

We refer to your letter of 7 May 96.

2 The insurance industry is of the view that interests in insurance policies should continue to be excluded from the Bills of Sale Act. Our Department supports the industry's stand.

3 We regret that due to time constraint, we are unable to provide more detailed feedback on the Interim Report. We would appreciate it if you could keep us informed of developments that could affect the insurance industry.

Yours faithfully

MS THERESA POON  
for INSURANCE COMMISSIONER  
INSURANCE COMMISSIONER'S DEPARTMENT

TBB/nmf/#A

**GOVERNMENT OF SINGAPORE**

Your Ref :  
Our Ref : RCB0560B/HWS/56640  
**(please quote this reference  
when replying)**

Registry of Companies and Businesses  
10 Anson Road #05-01/15  
International Plaza  
Singapore 079903  
Fax No. : 2251676  
Telephone : 3253704

Date : April 18, 1996

The Secretary  
Law Reform Committee  
Singapore Academy of Law  
Third Level, City Hall  
St Andrew's Road  
Singapore 178957

c/o  
Mrs Arfat Selvam  
Chairman, Sub-Committee  
to review the Bills of Sale Act

**CONFIDENTIAL**

Dear Mdm,

**REVIEW OF THE BILLS OF SALE ACT**

Please refer to your letter dated 8 March 1996.

2. Our comments on paragraphs 35-36 of the Interim Report are as follows :

2.1 Proposed Registry of Personal Property Security

2.1.1 The scope and extent of the proposed "power to excuse errors and omissions" should be clearly defined. As it would appear that such powers are likely to be exercised in the determination of priorities between competing interests (either in the enforcement of the security interest or upon winding-up), we are of the view that such powers are best exercised by the Court.

2.1.2 With regard to the rectification of errors and misstatements on the Register, an approach similar to that as spelt out in section 137 of the Companies Act (Cap. 50)("the Act") may be adopted.

2.2 Cross-linkage between the Companies Register and the Proposed Personal Property Security Register

2.2.1 From a practical point of view, the proposed Personal Property Security Register would necessarily adopt, as a starting point, the description of the property affected by the security interest. Relevant particulars would then be organised according to each property listed on the Register.

- 2.2.2 In contrast, the computerised Register of Charges is organised around the registration numbers and names of the entities with charges registered against their assets.
- 2.2.3 The information presently available on the computerised Register of Charges does not include the description of the property subject to the charge. Such information may however be extracted from the Forms 33 and 34 filed together with the individual records (available on hard copy or microfiche) of the relevant entities.
- 2.2.4 In view of the aforesaid, the proposed cross-linkage between the two computerised registers may not be feasible in terms of cost.

### 2.3 Discontinuation of the Companies Register

2.3.1 We are of the view that it is neither practicable nor desirable in the public interest to discontinue the registration of personal security interests under the Act, for the following reasons ·

- a The existing manner in which the Registry's records are organised allow for a convenient, one-stop search based on the registration number and name of the relevant entity. The Instant Information Search facility provides key information on, inter alia, the registered office address, key activities, identities of the directors and shareholder identities, charges registered, capital structure etc. Further information, if required, may be extracted from the respective forms filed together with the individual records (available on hard copy or microfiche) of the relevant entities.
- b The registration of such personal security interests under the Act serves to put any third party on notice the existence of transactions which may have a bearing on the financial position of the relevant entity.

2.2.2 Any repeal of the Bills of Sale Act would presumably require consequential amendments to section 131(3)(d) of the Act. We are of the view that any such amendments should not derogate from the requirement to effect the registration of such personal security interests (as is presently covered by that provision) under the Act.

2.2.3 We note that a minimum value may be imposed for the purposes of determining registrability under the proposed Personal Property Security Register, on the basis that only interests above a certain value are deemed substantial enough to warrant disclosure.

2.2.4 One may envisage a situation in which a company enters into a series of transactions, each falling below the stipulated minimum sum, creating personal security interests over its assets. Our concern is that such transactions (taken individually or as a whole), which may have a bearing on the financial position of the relevant entity, would avoid registration under the Act. We are accordingly of the view any proposed amendments to section 131(3)(d) of the Act should not result in the registrability of personal security interests being pegged to any minimum value.

3. You may wish to seek the views of the Official Assignee & Public Trustee on the determination of priorities of competing security interests (paragraphs 26-32).

4. Save for the aforesaid, we have no other comments on the Interim Report. We would like to express our appreciation for the opportunity to express our views on the Interim Report.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Hon Wei Seng', written in a cursive style.

HON WEI SENG  
SENIOR ASSISTANT REGISTRAR  
for REGISTRAR OF COMPANIES AND BUSINESSES (RCB) SINGAPORE

000001/WPFSYS/002982/WPPCRD