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## PART I

Acts, Ordinances, President's Orders and Regulations

GOVERNMENT OF PAKISTAN  
MINISTRY OF LAW AND JUSTICE

*Islamabad, the 30th April, 2020*

No. F. 2(1)/2020-Pub.—The following Ordinance promulgated on 29th April, 2020 by the President is hereby published for general information:—

ORDINANCE NO. IV OF 2020

AN

ORDINANCE

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

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

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

(203)

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[5470(2020)/Ex. Gaz.]

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

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

(2) It shall come into force at once.

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

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

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

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

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

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

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

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

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

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

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

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

“(xlviii) “security interest” means,—

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

(b) an absolute assignment of receivables;”;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Illustrations*

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

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

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

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

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

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

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

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

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

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



**“20. Appointment of registrar, deputy registrars and other officers.—**(1) The Commission may empower or appoint any officer of the Commission as the head of the Registry for the purposes of managing and controlling the register set up pursuant to section 21 and such other functions as may be determined by the Commission.

(2) The Commission may also appoint deputy registrars for each branch office of the Registry to perform, under the direction of the registrar, such functions, duties and powers of the registrar under this Act as may be notified by the Commission.

(3) The Commission may appoint such other officers with such designations as it may think fit for the purposes of this Act, to perform under the direction of the registrar, such functions, duties and powers under this Act as may be determined by the Commission.”

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

(a) in sub-section (1), the words “at the head office of the Registry” shall be omitted; and

(b) in sub-section (3), clause (b) shall be omitted; and

(c) in sub-section (4),—

(i) for the word “registrar” the word “Commission” shall be substituted; and

(ii) for the word “prescribe” the word “specify” shall be substituted.

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

(a) clause (a) shall be omitted;

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

“(ba) in the case of any other entity, as may be specified; and

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

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

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

(a) in sub-section (2),—

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

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

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

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

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

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

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

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

(v) clause (i) shall be omitted.

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

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

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

