

Secured Transactions in the Solomon Islands

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Key Points

- The Solomon Islands was one of the first Pacific Island countries to introduce secured transactions legislation, with the commencement of the *Secured Transactions Act 2008 (Act)*.
- The Act reformed traditional secured lending law in the Solomon Islands, particularly through its introduction of a simplified, user-friendly online filing registry. Registration and free public searches of registry records are available online, and occur instantaneously.
- The purpose of this article is to provide a brief overview of secured transactions law in the Solomon Islands, and a “how to” guide to registering security interests in the Solomon Islands.

Background

Solomon Islands Secured Transactions Act 2008

The Act was enacted by the National Parliament of Solomon Islands as an act to repeal the *Bill of Sales Act* and to provide for the regulation, creation, and registration of transactions pertaining to interest in moveable property for related matters.

The Act applies to:

- transactions that secure an obligation with collateral, regardless of the form of agreement or the terminology used, and whether the collateral is owned by the secured party or the debtor;
- the sale of accounts and secured sales contracts and to the lease goods for more than one year; and
- transactions relating to boats not regulated under the *Shipping Act* or flying objects not regulated under the *Civil Aviation Act*.¹

The Act does not apply to:

- the sale of a business;
- assignment solely for the collection of debt;
- the transfer of a claim for the present or future wages or other compensation of an employee;
- the mortgage of a vessel that is required under the *Shipping Act*; or
- transactions relating to aircraft regulated under the *Civil Aviation Act*.²

Secured Transactions Registry

The Act created a filing office which includes the publically available online Secured Transactions Registry (**STR**). This is the Solomon Islands equivalent to the Australian Personal Property and Securities Register. The STR is searchable by filing number, serial number or debtor's name.

¹ *Secured Transactions Act 2008* s 3(1).

² *Secured Transactions Act 2008* s 3(2).

Registrations and public searches are very user-friendly; they are conducted online, public searches are free, and users are provided with instantaneous search results, allowing instant clarity as to any competing claims over collateral.

A key feature of the STR is that generally a security interest is not enforceable against third parties until it is 'perfected' (this is discussed below). Priority generally follows the order of registration (earliest has the best right) and registrations are valid for a standard term of five (5) years (extendable).

Creation of security interest

A security interest attaches to collateral and becomes enforceable only if:³



A security interest is perfected when it has attached to the collateral and a means of perfection is completed. The means of perfection are:

- the filing of a notice;
- possession of the collateral; and
- control of the collateral.⁴

Creation of security interest

1. Specific security agreement

A lender can enter into a specific security agreement in relation to a given asset (collateral) (e.g. a car, a bus) whereby repayment to the secured party is secured by the agreement over the borrower's property.

Once executed, this specific agreement must be registered with the STR, which will notify potential future lenders of the original lender's security. This creates a standardised set of rights and notice procedure across a diverse range of property.

Once created, the security interest continues notwithstanding lease, licence, exchange or disposition unless agreed by the parties or pursuant to an express right in the Act.

³ Secured Transactions Act 2008 s 8.

⁴ Secured Transactions Act 2008 s 12(2).

The security interest in the collateral becomes enforceable upon an event of default occurring (as defined by the parties). This typically includes a failure of the customer to pay, or a reasonable belief that the property may be destroyed or solved.

2. General Security Agreement

A general security agreement is what was previously referred to as a “fixed and floating charge” or mortgage debenture. This covers all the assets of the borrower.

The advantage of using general security agreements (as opposed to specific security agreements) is that you do not need to describe each asset that is being used as security.

3. Guarantee

An individual or company (guarantor) can provide a guarantee to a lender. This secures the right for the lender to pursue the guarantor in the event of non-payment by the borrower.

Typically, the guarantor is required to take over the borrower’s repayment obligations upon default. It is therefore important that the guarantor is sure that the borrower will uphold its repayment obligations.

Guarantees cannot be registered on the STR because they are rights ‘in personam’ between the parties and not ‘in rem’ in relation to property. It is property interests that need to be registered.

4. Deed of cross-collateralisation

A deed of cross-collateralisation is used where separate debtors (who become covenantors) enter into an agreement with the same secured parties (i.e. a bank which has provided them a loan) that they will undertake the obligations and liabilities of the other parties. Each individual covenantor is jointly and severally liable, which means that in the event of a default by any party, the bank can call upon any security from any party to satisfy the debt owed, and any one party can be liable for any amount up to and including the whole value of the debt.

The deed of cross-collateralisation gives rights to the property subject to the security interest (rights in rem). This is in contrast to cross guarantees (discussed at point 5 below), which provide (unsecured) rights against individual people (guarantors) or rights in personam.

5. Cross guarantee and indemnity

A cross-guarantee and indemnity may be given by an individual or a company, whereby each guarantor agrees to guarantee the loan of the other guarantors. Liability may be unlimited or set to a certain threshold or specified amount and the cross-guarantees may be secured by reference to security or unsecured.

A cross-guarantee does not require registration on the STR.

6. Deed of Subordination (Postponement)

Perfection of a security interest (by notice, possession or control as set out above) gives the secured party rights in the security interest against third parties. The earlier in time, such as the first to register, generally have priority over later interests.

A deed of subordination (or postponement) involves the senior creditor (or the secured party with priority) giving up their priority interest to another creditor to become subordinated to the interest of the new creditor (or postpone their rights to the collateral or assets).

This is often used where a related party to a company or individual (i.e. director or shareholder) has a registered security interest which subordinates in favour of an unrelated secured party or lender.

7. Special Types of Security

Purchase Money Security Interest (PMSI)

A PMSI is a security interest taken by a seller of goods to secure the price of such goods or by a person who gives value to enable a debtor to acquire goods. This is primarily given over equipment, goods, inventory or livestock and has priority over another interest so long as the debtor (purchaser) receives possession of the equipment within 10 days of the interest being created.⁵ These take priority upon registration because they are primarily designed to ensure that small on-credit assignments are protected.

Ships

Ships can be used as collateral subject to a specific security agreement provided that it has been provisionally (or fully) registered in the Solomon Islands. Due to some inconsistencies in the relevant legislation, the ship must also be subject to a shipping mortgage (kept on a separate register).

Term Deposits/Deposit Accounts

Priority over these accounts can only be taken by control. This means that the secured party (i.e. bank) must have control of the account therefore the account must be held with their bank.

Registration on the Secured Transaction Registry (STR)

It is critical that you register any security agreement (but not guarantees) with the STR.

Notice to the registrar requires the following information:

- Debtor (Grantor) must be identified by name or as appears on the Solomon Islands companies registry (searches on the companies registry can be conducted online);
- Secured party details: The person who holds the security interest in the personal property or their agent;
- Collateral details: Collateral is the property that is the subject of a security interest. This can be general or specific but if it is a fixture you must also describe the immovable property to which the fixture will be affixed; and
- A copy of the security agreement.

The entry is valid for a term of 5 years. The registration can be extended for another term of 5 years if notice is given within 6 months of the original registration expiring.⁶

Enforcement

Upon the event of a major default the secured party has a right to:

⁵ Secured Transactions Act 2008 s 21.

⁶ Secured Transactions Act 2008 s 31.

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- possession or control of the collateral (even if the security agreement is silent);⁷
- dispose of the collateral (i.e. a power of sale)⁸ that must be exercised in a “commercially reasonable manner”⁹;
- any other rights or remedies defined in the registered agreement;¹⁰ and
- retain the collateral subject to the agreement (and notice given to the parties).¹¹

Conclusion

The introduction of the Act has greatly strengthened the financial system in the Solomon Islands, particularly as a means of unlocking finance and allowing far greater access to credit for both individuals and companies. The STR is simple and easy to use and has provided an efficient means for searching and registration of security interests, ensuring that the legal process as set out in the Act can be easily achieved.

The Pacific Legal Network has extensive experience in the various PPS regimes across the Pacific. We can assist in documenting and registering security interests arising from transactions to ensure the priority of a security interest is achieved.

Contact

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⁷ Secured Transactions Act 2008 s39.

⁸ Secured Transactions Act 2008 s 42.

⁹ Secured Transactions Act 2008 s 43.

¹⁰ Secured Transactions Act 2008 s39.

¹¹ Secured Transactions Act 2008 s 47.