



SAMOA

CHATTELS TRANSFER ACT 1975

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CHATTELS TRANSFER ACT 1975

1975

No.25

AN ACT to amend and consolidate the law relating to chattel
securities and the transfer of chattels.

[Assent and commencement date: 23 December 1975]

PART 1
PRELIMINARY

1. Short title – This Act may be cited as the Chattels
Transfer Act 1975.

2. Interpretation – In this Act, unless the context
otherwise requires:

“chattels” means any personal property that can be
completely transferred by delivery, and includes
machinery, stock, and crops, and also includes book
debts, but does not include:

- (a) chattel interests in real estate, title deeds, choses in
action (not being book debts), negotiable
instruments; or
- (b) shares and interests in the stock, funds, or securities
of any Government or local authority; or
- (c) shares and interests in the capital or property of any
company or other corporate body; or
- (d) debentures and interest coupons issued by any
Government, or local authority, or company, or
other corporate body;

“executed” means signed by the grantor or his or her
attorney, and, in the case of an instrument by way of
bailment, means signed by the grantor and grantee or
their respective attorneys;

“factory” or “workshop” means any premises on which any manual labour is exercised by way of trade or for purposes of gain in or about the making, altering, repairing, ornamenting, finishing, or adapting for sale of any article or part of any article;

“grantee” means the party to an instrument to whom chattels therein referred to, or any interest therein are thereby granted or assigned, or agreed so to be, and includes his or her executors, administrators, and assigns, and in the case of a company or corporation includes the successors and assigns of such company or corporation;

“grantor” means the party to an instrument who thereby grants or assigns, or agrees to grant or assign, chattels therein referred to, or any interest therein, and includes his or her executors, administrators, and assigns, and in the case of a company or corporation includes the successors and assigns of such company or corporation;

“instrument” means and includes any bill of sale, mortgage, lien, or any other document that transfers or purports to transfer the property in or right to the possession of chattels, whether permanently or temporarily, whether absolutely or conditionally, and whether by way of sale, security, pledge, gift, settlement, bailment, or lease, and also the following:

- (a) inventories of chattels, with receipt thereto attached;
- (b) receipts for purchase money of chattels;
- (c) other assurances of chattels;
- (d) declarations of trust without transfer;
- (e) power of attorney, authorities, or licences to take possession of chattels as security for any debt;
- (f) an agreement, whether intended to be followed by the execution of any other instrument or not, by which a right in equity to any chattels, or to any charge or security thereon or thereover, is conferred;

“instrument” does not include the following:

- (a) securities over, or bailments or leases of, fixtures (except “trade machinery” as hereinafter defined), when mortgaged or leased in any mortgage or lease of any freehold or leasehold

interest in any land or building to which they are affixed, and whether or not such fixtures are separately mortgaged or leased by mention thereof in separate words, and whether or not power is given by such mortgage or lease to sever such fixtures from the land or building to which they are affixed without otherwise taking possession of or dealing with such land or building;

- (b) assignments for the benefit of the creditors of the person making the same;
 - (c) transfers of or agreements to transfer instruments by way of security;
 - (d) transfers or assignments of any ship or vessel or any share thereof if the ship or vessel is registered or required to be registered under the Shipping Act 1998;
 - (e) transfers of chattels in the ordinary course of business of any trade or calling;
 - (f) debentures and interest coupons issued by any Government or local authority;
 - (g) bills of sale of chattels in any foreign parts, or at sea;
 - (h) bills of lading, warehouse keepers' certificates, warrants, or orders for the delivery of chattels, entries in auctioneers' books, or any other document used in the ordinary course of business as proof of the possession or control of chattels, or authorising or purporting to authorise, either by endorsement or delivery, the possessor of such document to transfer or receive the chattels thereby represented;
 - (i) debentures and interest coupons issued by any company or other corporate body and secured upon the capital stock or chattels of such company or other corporate body;
 - (j) mortgages or charges granted or created by a company incorporated or registered under the Companies Act;
- “instrument by way of bailment” means an instrument whereby chattels are leased or bailed;

“instrument by way of security” means an instrument given to secure the payment of money or the performance of some obligation;

“Registrar” means the Registrar of the Supreme Court;

“registration” means the filing of an instrument with schedule or inventories, or a true copy thereof, with the affidavit hereinafter mentioned;

“schedule” includes inventory;

“stock” includes any cattle, horses, pigs, poultry, and any other living animals;

“trade machinery” means the machinery used in or attached to any factory or workshop, but does not include:

- (a) the fixed motive powers, such as engines, and boilers, and other fixed appurtenances of the said motive powers; or
- (b) the fixed power machinery (such as the shafts, wheels, drums, and their fixed appurtenances) for transmitting the action of the motive powers to the other machinery, fixed and loose; or
- (c) the pipes for steam, gas, and water.

3. Act binding on Government – This Act binds the Government in respect of all instruments to which the Government is a party.

4. Attornment or agreement giving power of distress – An attornment or agreement whereby a power of distress is given or agreed to be given by one person to another by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a means of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be an instrument within the meaning of this Act so far as regards any chattels seized or taken under the power of distress:

PROVIDED THAT nothing in this section prejudices the right of a landlord to distrain for rent;

PROVIDED ALSO THAT where a mortgage or any interest in land, after entering (under the powers contained or implied in the mortgage) into possession of the mortgaged land, or into receipt of the rents and profits thereof, leases the land or any part thereof to the mortgagor at a fair and reasonable rent, the instrument

whereby such lease is effected is taken not to be an instrument within the meaning of this Act.

PART 2 REGISTRATION

5. Registration of instrument to be notice – (1) Save as provided in subsection (3), all persons are taken to have notice of an instrument and of the contents thereof when and so soon as such instrument has been registered as provided by this Act:

PROVIDED THAT if registration of such instrument is not renewed pursuant to the provisions of this Act, prior registration is taken not to operate as notice after the lapse of the period within which renewal is required by this Act.

(2) Save as provided in subsection (3), all persons are taken to have notice of a security granted wholly or partly upon chattels by a company registered under the Companies Act and of the contents of such security, so far as it relates to chattels, immediately upon the registration of such security in the manner provided by the Companies Act.

(3) Registration of an instrument to which subsection (1) or (2) applies shall not in itself constitute notice of the existence of that instrument or of its contents to the grantee of any prior registered instrument relating to the same chattels or to any of those chattels.

6. Mode of registration – Registration of an instrument shall be effected by filing the same and all schedules endorsed thereon, annexed thereto, or referred to therein, or a true copy of such instrument and the schedules, and an affidavit in Form 1 in Schedule 1 or to the like effect, in the Supreme Court.

7. Limitation of time for registration – (1) The period within which an instrument may be registered is 21 days from the day on which it was executed:

PROVIDED THAT instruments executed out of Samoa may be registered at any time within 90 days from the execution thereof;

PROVIDED ALSO THAT when the time for registering an instrument expires on a day whereon the Registrar's office is closed, the registration is valid if made on the next following day on which such office is open.

(2) If there are more grantors than one, the date of execution of the instrument is taken to be the date of the execution by the grantor who first executes the instrument.

(3) The day on which the instrument is executed is not included in the period for registration, but the instrument may be registered on that day.

8. Register book and index to be kept – (1) The Registrar shall cause every instrument registered in his or her office under this Act to be numbered, and shall mark on each such instrument, or on the filed copy thereof, the date of registration and the number, and shall at the time of registration enter in a register to be kept for the purpose in his or her office the particulars of the instrument registered, according to Form 2 in Schedule 1.

(2) The Registrar shall also keep an index in which he or she shall enter the names of the grantors of instruments by way of security and of the grantors and grantees of all other instruments, and shall refer therein to the entries in the register book of the instruments given by each such grantor.

(3) The index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors and grantees whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

9. Fee on registration – There shall be paid to the Registrar upon the registration of an instrument the prescribed fee.

10. Time for registration may be extended, and mistakes in register corrected – The Supreme Court, on being satisfied that the omission to register an instrument or an affidavit of renewal thereof within the time prescribed by this Act, or according to the form or effect required by this Act, or that the omission or misstatement in the register or in any affidavit of the name, residence, or occupation of any person, or of any other matter, was accidental or due to inadvertence, may order such omission or misstatement to be rectified by extending the time for such registration, or by the filing of a supplementary affidavit, or by the insertion in the register of the true name, residence, or occupation, on such terms and conditions as it thinks fit.

PART 3
RENEWAL OF REGISTRATION

11. Registration of instruments must be renewed within 5 years – (1) The registration of an instrument ceases to be of any effect at the expiration of 5 years from the date of the registration or, where the registration has been renewed in accordance with this section, at the expiration of 5 years from the date of the renewal of the registration or of the last renewal of the registration, as the case may be.

(2) Subject to section 10, the period within which the registration of an instrument may be renewed is 5 years from the date of the registration or where the registration has previously been renewed in accordance with this section, 5 years from the date of the prior renewal of the registration or of the last prior renewal of the registration, as the case may be.

(3) The registration of an instrument shall be renewed by filing in the office of the Registrar an affidavit in Form 3 in Schedule 1 or to the like effect.

(4) The Registrar shall thereupon number such affidavit as if the same were an instrument presented for registration, and renumber the instrument originally registered in the said office, or the filed copy thereof, with a similar number, and mark thereon the date of renewal of registration, and shall enter particulars of the instrument in the register book in like manner as on an original registration, and shall also enter the date of renewal of registration in the column provided therefore in the register book.

(5) There shall be paid to the Registrar upon the renewal of registration of any instrument the prescribed fee.

PART 4
SEARCHES AND OFFICE COPIES

12. Register book and instruments may be searched and viewed – The register books and indices hereinbefore provided for, and every instrument registered as aforesaid, or the filed copy thereof, may be searched and viewed by all persons during the office hours of the Supreme Court upon payment of the prescribed fee for every search against any one person.

13. Office copies may be had – A person is entitled to have an office copy or an extract of or from any instrument with the schedules filed therewith, or of or from the copy thereof registered as aforesaid, and an office copy of any affidavit filed under this Act on payment of the prescribed fee; or if he or she makes such copy or extract the Registrar shall, upon satisfying himself or herself that such copy or extract is correctly made, certify the same upon payment of the prescribed fee.

14. Instruments and affidavits presumed to have been duly executed or sworn – (1) An instrument registered or an affidavit filed under this Act is, if purporting to be duly executed or sworn, *prima facie* presumed to have been duly executed or sworn.

(2) The filed copy of any instrument, and of the schedules filed therewith, or an office copy of any such filed copy, and an office copy of any affidavit filed under this Act, and a copy or extract certified by the Registrar under section 13, and a certificate by the Registrar of the time when any instrument or affidavit was registered or filed, are, in all Courts and before all persons having by law or consent of parties authority to take evidence, to be received as *prima facie* evidence of such instrument, schedules, or affidavit, and of the signatures of the parties to the instrument and of the attesting witnesses thereto, and of the fact and time of the registration or filing of the instrument or affidavit.

(3) It is not necessary to prove the handwriting or official position of the person appearing as such Registrar to have certified any such copy or extract as aforesaid, or to have given any such certificate as aforesaid.

PART 5 EFFECT OF NON-REGISTRATION

15. Unregistered instruments to be void in certain cases –

(1) An instrument, unless registered in the manner hereinbefore provided, is, upon the expiration of the time for registration, or if the time for registration is extended by the Supreme Court, then upon the expiration of such extended time, taken to be fraudulent and void as against:

- (a) the assignee in bankruptcy of the estate of the person whose chattels or any of them are comprised in any such instrument;
- (b) the assignee or trustee acting under any assignment for the benefit of the creditors of such person;
- (c) a bailiff, and other person seizing the chattels or a part thereof comprised in any such instrument, in execution of the process of any court authorising the seizure of the chattels of the person by whom or concerning whose chattels such instrument was made, and against a person on whose behalf such process was issued, so far as regards the property in or right to the possession of any chattels comprised in or affected by the instrument which, at or after the time of such bankruptcy, or of the execution by the grantor of such assignment for the benefit of his or her creditors, or of the execution of such process (as the case may be), and after the expiration of the period within which the instrument is required to be registered, are in the possession or apparent possession of the person making or giving the instrument, or of any person against whom the process was issued under or in the execution of which the instrument was made or given, as the case may be.

(2) Until the expiration of the time or extended time for registration of any instrument under this Act, and so long as an instrument continues to be registered hereunder, the chattels comprised in that instrument, if by way of bailment, shall not be deemed to be in the possession, order, or disposition of the grantee, or if an instrument of any other kind, then of the grantor, within the meaning of the Bankruptcy Act 1908.

16. Unregistered instrument not to affect bona fide purchaser for value – Upon the expiration of the time or extended time for registration no unregistered instrument comprising any chattels whatsoever shall, without express notice, be valid and effectual as against any *bona fide* purchaser or mortgagee for valuable consideration, or as against any person

bona fide selling or dealing with such chattels as auctioneer or dealer or agent in the ordinary course of his or her business.

PART 6 INSTRUMENTS IN GENERAL

17. Instrument to be attested – Sealing is not essential to the validity of any instrument; but the execution of an instrument shall be attested by at least one witness, who shall add to his or her signature, residence and occupation.

18. Instrument to take effect from execution – An instrument is taken to be made on the day on which it is executed, and takes effect from the time of its execution.

19. Registration to give priority – Where 2 or more instruments are executed comprising in whole or in part any of the same chattels, priority shall be given to such instrument or instruments in the order of the time of their registration respectively as regards the title to or right to the possession of such chattels:

PROVIDED THAT where a grantee under a second or subsequent instrument claims priority by virtue of prior registration the grantee must prove that at the time of the execution of the instrument under which the grantee claims he or she had no notice of any existing unregistered instrument.

20. Instrument to have inventory of chattels – An instrument shall contain, or shall have endorsed thereon or annexed thereto, a schedule of the chattels comprised therein, and, save as is otherwise expressly provided by this Act, shall give a good title only to the chattels described in the said schedule, and shall be void to the extent and as against the persons mentioned in sections 15 and 16 in respect of any chattels not so described.

21. Instrument void where grantor not owner of chattels – Save as is otherwise expressly provided by this Act, an instrument is void to the extent and as against the persons mentioned in sections 15 and 16 in respect of any chattels which the grantor acquires or becomes entitled to after the time of the execution of the instrument:

PROVIDED THAT where an instrument by way of security over any chattels is therein expressed to be given as security for a loan to be expended, in whole or in part, in the purchase of those chattels, the grantor is taken to have acquired the chattels contemporaneously with the execution of the instrument.

22. Instrument subject to a defeasance, condition or declaration of trust, void in certain cases – (1) If an instrument is made or given subject to any defeasance, condition, or declaration of trust not contained in the body thereof, the defeasance, condition, or declaration of trust shall for the purposes of this Act be taken as part of such instrument, and shall be written on the same paper or parchment on which such instrument is written, otherwise such instrument is void to the extent and as against the persons mentioned in section 15 so far as regards the property in or right to the possession of any chattels comprised in or affected by such instrument.

(2) In the case of a document securing the payment of the money or any part thereof payable by virtue of an instrument, it is not necessary for the purposes of this section to write such document on the same paper or parchment so long as the date, names of the parties thereto, and the nature of the security are set forth in the instrument or in some schedule to it.

23. Saving – Nothing in sections 20, 21 and 22 renders an instrument void in respect of any of the following chattels:

- (a) stock, and crops;
- (b) fixtures, plant, or trade machinery where the same are used in, attached to, or brought upon any place in substitution for any of the like nature described in, or in the schedule to, such instrument;
- (c) tractors, engines, machines, vehicles, implements, and farming plant of every description described in such instrument and used upon or in connection with any land or premises specified in the instrument.

24. Saving of Acts prescribing formalities as to execution of instruments and securing of rights relating to instruments – Nothing in this Act is taken to affect any enactment in force:

- (a) prescribing any formalities to be observed on or about the execution of instruments within the meaning of this Act; or
- (b) conferring or securing any rights or claims under or in respect of any such instrument.

PART 7

INSTRUMENTS COMPRISING STOCK

25. How stock to be described – Where stock are comprised in any instrument, the stock shall be described or referred to therein or in the schedule to it by some brand or brands, earmark or earmarks, or other mark or marks upon them, or shall be so described or referred to by sex, age, name, colour, or other mode of description as to be reasonably capable of identification, otherwise the instrument is void to the extent and as against the persons mentioned in section 15, so far as regards such or so much of such stock as are not so described or referred to or are not reasonably capable of identification; and the land or premises on which such stock are or are intended to be de-pastured or kept shall be described or mentioned in such instrument or schedule.

26. Stock to include increase of stock and the stock comprised – An instrument comprising stock is, unless the contrary be expressed therein, taken to include not only the stock comprised therein as provided by section 25, but also the natural increase of such stock.

PART 8

ASSIGNMENT OF BOOK AND OTHER DEBTS

27. Book debts – (1) Book debts are taken to be chattels, and are taken to be situated in the place where the grantor of the instrument comprising them longest resided or carried on business during the period of 6 months next before the execution of the instrument.

(2) For the purposes of any instrument comprising book debts, a debt is taken to be a separate chattel, and to be described by setting forth the amount of the debt and the name of the debtor or firm of debtors so far as is reasonably necessary to show by whom the debt is owing.

(3) In this section, “book debts” means debts owing to any person in the course of the person’s trade or business, but does not include any debt secured or charged on land.

PART 9 AS TO INSTRUMENTS BY WAY OF SECURITY

28. Form of instrument by way of security – (1) An instrument by way of security may be in Form 4 in Schedule 1 or to the like effect, with any variations or modifications thereof and additions thereto as are expressed in the instrument.

(2) An instrument by way of security securing an account current continues in full force and effect despite that the grantor may be in credit on such account.

29. Where successive securities are given over same chattels – Where an instrument by way of security is executed after the execution of a prior instrument which has never been registered, and comprises all or any of the chattels comprised in the prior instrument, then if the subsequent instrument is given as a security for the same debt as is secured by the prior instrument, or for any part of such debt, it is, to the extent to which it is a security for the same debt or part thereof, and so far as respects the chattels comprised in the prior instrument, void to the extent and as against the persons mentioned in section 15, unless it is proved to the Court having cognisance of the case that the subsequent instrument was *bona fide* given for the purpose of correcting some material error in the prior instrument, and not for the purpose of evading this Act.

PART 10 SECURITIES OVER CROPS

30. Security may be given over crops – An instrument by way of security may be granted over the crops described or referred to therein or in the schedule thereto then actually sown or growing, or to be sown or grown in or upon the lands mentioned in the instrument, and shall entitle the grantee thereof to the whole of the crops therein mentioned, not only while growing, but afterwards when cut or separated from the soil, and whether

stacked or stored on the land where the same were grown or on any other land or premises.

31. Crops that cannot be harvested within one year – No such instrument shall avail to give security over any crops that cannot in the ordinary course of husbandry be harvested and taken off such land within one year from the date of the execution of the instrument.

32. Saving of rights of landlord and mortgagee – No instrument shall prejudicially affect the rights of a landlord or mortgagee of any land whereon the crops are growing, unless and so far as the landlord or mortgagee has consented in writing to such instrument:

PROVIDED THAT no instrument being duly registered shall be extinguished or prejudicially affected by any subsequent sale, lease, mortgage, or other encumbrance of or upon the land described or referred to in the instrument or in any schedule thereto.

PART 11 ENTRY OF SATISFACTION

33. Memorandum of satisfaction may be filed – (1) In the case of an instrument by way of security, upon the production to the Registrar of a memorandum of satisfaction in Form 5 in Schedule 1 or to the like effect, signed by the grantee thereof or his or her attorney, discharging the chattels comprised in such instrument or any specified part thereof from the money secured thereby or any specified part thereof, or from the performance of the obligation thereby secured or any specified part thereof, and on production of such instrument and payment of the prescribed fee, the Registrar shall file such memorandum and make an entry thereof in the register book on the page where the instrument is registered.

(2) The execution of the memorandum shall be attested by at least 1 witness, who shall add to his or her signature his or her residence and occupation, and shall be verified by the affidavit of that witness.

(3) The Registrar may, in his or her discretion, dispense with the production of the instrument on proof by affidavit to his or her

satisfaction that the instrument has been destroyed, cannot be found, or cannot be produced.

34. Effect of filing such memorandum – From and after the filing of any such memorandum the debt or charge created by the instrument shall be vacated to the extent specified in the memorandum, and the interest of the grantee in the chattels expressed to be discharged shall vest in the person for the time being entitled to the equity of redemption therein, but so far only as such interest is expressed by the memorandum to be determined, and subject to any lien or equity affecting the chattels.

35. Public Trustee may sign memorandum in certain cases – Where the grantee of an instrument by way of security is absent from Samoa, and there is no person in Samoa authorised to discharge the same on his or her behalf at or after the date appointed for the payment of the money secured by such instrument, the Public Trustee may receive such money in trust for the person entitled thereto, and may sign a memorandum of satisfaction in lieu of such person, and upon the filing thereof such memorandum, signed by the Public Trustee, shall be effectual as a memorandum signed by the person entitled to such money.

36. Supreme Court may order memorandum to be filed – The Supreme Court may, upon application made for that purpose, order a memorandum of satisfaction to be filed in respect of any instrument by way of security if it appears to it that the debt (if any) for which such instrument was given as security has been satisfied or discharged, or that the obligation for securing the performance of which the instrument was given has been performed; and thereupon such order may be filed by the Registrar and entered in his or her book in like manner as if the same were a memorandum within the meaning of section 33.

PART 12

SALES BY REGISTRAR

37. Sales by Registrar – Sections 99 to 103 of the Property Law Act 1952 apply, with the necessary modifications, to chattels under this Act, and the chattels or any part thereof may be sold

along with or separately from land (if any) mortgaged to secure payment of the same money as is secured by any instrument.

PART 13

SALE OF GRANTOR'S INTEREST

38. Grantor's interest in chattels may be sold in execution

– (1) Where legal process is issued against the chattels of a judgment debtor for the execution of a judgment of any Court, and the chattels, or any of them, are comprised in any instrument by way of security, the officer charged with the execution of the process may, instead of seizing and selling the chattels so comprised, sell the right, title, and interest of the judgment debtor in the same.

(2) The grantee of the instrument, on receiving notice of the purchase of that right, title, and interest, may take possession of the chattels comprised in the instrument.

(3) A grantee so taking possession is taken to hold the chattels in trust for the purchaser of the right, title, and interest, subject to payment of all money due under the instrument.

(4) If the chattels are afterwards sold under the power of sale expressed or implied in the instrument, and any surplus remains out of the proceeds of the sale after payment of all money due under the instrument, the grantee shall on demand pay over that surplus to the purchaser of the said right, title and interest.

(5) If the grantee makes a default herein, the purchaser may bring an action against the grantee to recover the surplus, as money received to the use of the purchaser.

PART 14

IMPLIED COVENANTS, SEVERAL AND JOINT COVENANTS, AND OTHER BINDING COVENANTS

39. Covenants for title – There shall be implied in every instrument the covenants for title on the part of the grantor set forth in Schedule 2, and such implied covenants shall have the same effect as if the same were respectively set out at length in the instrument.

40. Covenants, provisos, agreements and powers, implied in instruments by way of security – There shall be implied in

every instrument by way of security the covenants, provisos, agreements, and powers set out in Schedule 3, or such of them as are applicable; and such implied covenants, provisos, agreements, and powers shall, subject to any modification of the same expressed in the instrument, have the same effect as if the same were respectively set out therein at length.

41. Covenants to be several as well as joint – Where there are 2 or more grantors or 2 or more grantees of any instrument, then any covenants, conditions, provisos, agreements, and powers expressed in such instrument, or implied therein by this Act, and imposing an obligation on such grantors or grantees, or ensuring for the benefit of such grantors or grantees, shall, except in so far as a contrary intention appears, be deemed to impose such obligation, or confer such benefit, as the case may be, severally as well as jointly.

42. Covenants to bind executors – Except in so far as a contrary intention appears, all covenants, conditions, provisos, agreements, and powers expressed in any instrument, or implied therein by this Act, shall bind the executors, administrators, and assigns of the person, or the successors and assigns of a company or corporation, upon whom such covenants, conditions, provisos, agreements, and powers impose an obligation, and shall operate for the benefit of the executors, administrators, and assigns of the person, or the successors and assigns of the company or corporation, for whose benefit the same ensure.

43. Covenants may be negatived or varied – All or any of the covenants, provisos, conditions, agreements, or powers set forth in Schedules 2 and 3 may be negatived, modified, or altered, or others may be added to them, by express words in the instrument.

PART 15

TRANSFERS OF INSTRUMENTS

44. Form of transfer of instrument – An instrument may be transferred by a document in the Form in Schedule 4 or to the like effect, and every transferee, his or her executors, administrators, and assigns, shall, in respect of the instrument transferred, have

the same rights, powers, and remedies, and be subject to the same obligations, as the transferor.

45. Registration of transfers – (1) Transfers of instruments by way of security may be registered after the execution thereof in like manner as instruments are registered; and, in case 2 or more transfers of any one such instrument are executed, a registered transfer shall have priority over an unregistered transfer; and, in case 2 or more transfers of any one such instrument are registered, priority shall be given to such transfers in the order of their time of registration.

(2) There shall be paid to the Registrar upon the registration of every transfer of an instrument by way of security the prescribed fee.

PART 16 OFFENCES

46. Attempt to defraud grantee – The grantor of an instrument by way of security who, by sale or delivery without the consent of the grantee of any chattels comprised in or affected by such instrument, or by any other means, defrauds or attempts to defraud the grantee of the same or any part thereof, and thus or by any other means directly or indirectly defeats, invalidates, or impairs the grantee's security over the same, and every person who wilfully aids and abets any person in defrauding or attempting to defraud the grantee by defeating, invalidating, or impairing such instrument or in attempting to do so, is liable to 2 years' imprisonment and to a fine not exceeding 2 penalty units.

PART 17 AS TO MORTGAGES, CHARGES, AND DEBENTURES OF COMPANIES

47. Application of act to mortgages, charges, and debentures by companies – Sections 26, 28, 30 to 32, 37 to 43, and 46 apply in all respects to mortgages, charges, and debentures granted or issued by any company and registered with the Registrar of Companies under the Companies Act 2001 in the same manner and to the same effect as if such mortgages, charges, or debentures were instruments by way of security.

**PART 18
REGULATIONS**

48. Regulations – The Head of State may, acting on the advice of Cabinet, make regulations prescribing fees payable under this Act, and for any other purpose which is necessary or expedient for giving full effect to or for the administration of this Act.

**PART 19
REPEAL AND SAVING**

49. Repeal and saving – (1) The Chattels Transfer Act 1924 (NZ) ceases to form part of the law of Samoa, provided that all registers, registrations, instruments and acts of authority which originated thereunder and are subsisting at the commencement of this Act shall ensure as fully and effectually as if they had originated under the corresponding provisions of this Act.

(2) All fees which as at the commencement of this Act were payable by virtue of the Chattels Transfer Act 1924 continue to be payable until other provision is made in that behalf under this Act.

**SCHEDULE 1
(Sections 6, 8(1), 11(3), 28(1) and 33(1))**

**FORM 1
(Section 6)**

AFFIDAVIT ON REGISTRATION OF INSTRUMENT

In the Supreme Court of Samoa – In the matter of the Chattels Transfer Act 1975:

I, *(Full name of deponent)*, of *(Place of residence or business)*, in Samoa *(Occupation)*, make oath and say as follows:

1. The paper writing hereto annexed and marked "A" is a true copy of an instrument under the above-mentioned Act and of every schedule or inventory thereon endorsed or thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by *(Full name of grantor)*.

2. The said instrument was made and given by the said (*Full name of grantor*) on the day of 20
3. I was present, and saw (*Full name of grantor*) duly execute the said instrument on the day of 20, at (*State place where instrument executed*).
4. The said (*Full name of grantor*) resides at (*Place of residence*), and is (*Occupation*). (*This may be varied to described residence at date of instrument.*)
5. The name subscribed to the said instrument as that of the witness attesting the due execution thereof by the said (*Name of grantor*) is in the proper handwriting of me, this deponent.
6. I am (*Occupation*), and reside at (*Place of residence*).
E.F.

Sworn at, the day of 20, before me,
G.H., Solicitor (or Registrar of the Supreme Court).

FORM 2
(Section 8(1))

REGISTERED BOOK

By Whom Given (or Against Whom Process Issued) To Whom
Given

No.	Name	Residence	Occupation	Name	Residence
Occupation					

Nature and Date Renewal Satisfaction Entered of Instrument	Date and Time of Registration	Date of
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FORM 3
(Section 1(3)1)

**AFFIDAVIT ON RENEWAL OF REGISTRATION OF
INSTRUMENT**

In the Supreme Court of Samoa - In the matter of the Chattels Transfer
Act 1975:

I, *(Full name of deponent)*, of *(Place of residence or business)*, in Samoa *(Occupation)*, make oath and say as follows:

1. I am the grantee *(or grantor, in the case of an instrument by way of bailment)* of the instrument registered under the above Act as No., and made between *(State names of parties to instrument, their residences and occupations, as appearing therein; also names of the parties to the instrument, their residences and occupations at the time of the making of the affidavit)*.
(If the affidavit is made by an agent, clerk, or servant of the grantee or grantor, state such fact, and also state briefly how deponent has become acquainted with the facts deposed to.)
2. The said instrument was registered on the day of 20
3. The registration of the said instrument was last renewed on the day of 19
(This paragraph is inapplicable where registration of the instrument is being renewed for the first time.)
4. The said instrument is still subsisting, and in full force and effect. C.D.

Sworn at this day of 20, before me:

G.H., Solicitor (or Registrar of the Supreme Court.)

FORM 4
(Section 28(1))

INSTRUMENT BY WAY OF SECURITY

A.B., of *(State residence and occupation)*, being owner of the chattels mentioned in the schedule hereto *(where a schedule is necessary)*, in consider of the sum of \$ this day lent and advanced to him by C.D., of *(State residence and occupation)*, *(Or, if consideration not an advance of money, state any other consideration for which mortgage given)*, does hereby assign and transfer the same to the said E.F. by way of mortgage, to secure the payment of the said sum of \$ on the day of 20, with interest thereon in the meantime, and so long as the same or any part thereof remains unpaid, at the rate of \$ percent per annum by payments on the day of the

Chattels Transfer Act 1975

months of and in each year, (*Implied covenants, powers, and provisions may be Varied or negatived.*)

In witness whereof A.B. has hereunto subscribed his name, this day of 20

(SCHEDULE)

A.B.

Signed by the above-named A.B. in the presence of:

E.F.,

(*Residence and Occupation*)

FORM 5

(Section 33(1))

MEMORANDUM OF SATISFACTION

I, C.D., hereby consent to a memorandum of satisfaction being written upon the instrument (or registered copy of the instrument) given for securing the sum of \$....., bearing date the day of 20, and made between and, and registered on the day of 20, the money or which such instrument was given as a security having been satisfied.

Dated this day of 20

C.D., Grantee (*or Assignee*).

Witness: E.F.

(*Residence and Occupation*).

SCHEDULE 2

(Section 39)

COVENANTS IMPLIED IN ALL INSTRUMENTS

THAT the grantor has good right and full power to assign to the grantee the chattels purporting to be hereby assigned, and that free and clear from encumbrances other than such as are herein mentioned.

That the grantor will, at the cost of the grantee or, if the instrument is by way of security, at the cost, until sale, of the grantor, and thereafter

of the person requiring the same, do and execute all such acts, deeds, matters, and things for the better assigning the chattels hereby assigned, or intended so to be, as by the grantee or other person before mentioned may from time to time be reasonably required.

SCHEDULE 3
(Section 40)

**COVENANTS IMPLIED IN INSTRUMENTS BY WAY OF
SECURITY**

1. That the grantor will pay to the grantee the principal money and interest hereby secured, at the rate and at the times herein mentioned, without any deduction whatever.
2. That the grantor will also pay interest on any further advances that may be secured by this or her instrument, computed from the time of making the same respectively, at the rate and on the dates mentioned for the payment of interest in this or her instrument.
3. That the grantor will not, at any time while any money remains owing on this or her security, do or allow any act or deed whereby the chattels hereby assigned shall or may become prejudicially affected, and will at all times, while any money remains owing on his or her security, duly pay all rents from time to time coming due in respect of any lands or premises on which any of the chattels hereby assigned are for the time being situate.
4. That the grantor will at all times, while any money remains owing on this or her security, keep and maintain all and singular the chattels hereby assigned in the like good order and condition in which they are at the date hereof; and, if any of the same are damaged or destroyed, or cease to exist, will repair such damage, or replace the chattels so destroyed or ceasing to exist, with other chattels of a like nature; and further will, if required so to do by the grantee, execute any instrument that may be necessary to give to the grantee security over chattels replacing the chattels which have been destroyed or have ceased to exist.

**PROVISOS AND AGREEMENTS IMPLIED IN
INSTRUMENTS BY WAY OF SECURITY**

5. Provided always, and it is hereby declared and agreed, that until the grantor makes default in the payment of any of the money hereby

secured, or in the observance or performance of any covenant, condition or agreement herein expressed or implied, and on his or her part to be observed and performed, or until the grantor becomes bankrupt, or until a judgment of any Court against the grantor has remained unsatisfied for 10 days, the grantor may retain possession and use of the chattels hereby assigned.

6. Provided further that the giving by the grantor to the grantee of any bill of exchange or promissory note for the whole or any part of the money hereby secured shall not, until such bill or note is honoured or met, be considered as payment of or on account of the money secured by this or her instrument, or in any way affect or alter the rights or powers of the grantee by virtue of this or her instrument; and no promissory note or bill of exchange which before, at, or at any time after the execution of this or her instrument may be given by the grantor to the grantee for the whole or any portion of the money hereby secured, or the remedy thereon of the grantee or of the holder thereof, shall merge in the covenants herein expressed or implied.

POWERS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY

7. Provided always, and it is hereby declared and agreed, that if default is made by the grantor in payment of any of the principal or interest money hereby covenanted to be paid on the day on which the same ought to be paid according to the terms hereof, or in the observance or performance of any of the covenants, conditions, or agreements herein expressed or implied, and on the grantor's part to be observed and performed, or if the grantor becomes bankrupt, or if at any time a judgment of any Court against the grantor remains unsatisfied for 10 days, then and in such case the grantee, either personally or by his or her agent or servants, may immediately thereupon or at any time thereafter, without any further consent by the grantor, and without giving to the grantor any notice, or waiting any time, and notwithstanding any subsequent acceptance of any payment of any money due on this or her security, enter upon any lands or premises whereon the chattels for the time being subject to this or her security maybe, and take possession thereof, and sell and dispose of the same or any part thereof by private sale or public auction, separately or together, in such lots and generally in such manner in every respect as the grantee deems expedient, with power to allow time for payment of purchase money or to buy in the said chattels or any part thereof at such auction, and to rescind or vary the terms of any contract or sale, and to resell without being

answerable for any loss or expense occasioned thereby, and to execute all such assurances and do all such things for giving effect to any such sale as may be necessary or proper; and the receipt of the grantee or his or her agent shall be a sufficient discharge to any purchase at such sale for any of the purchase money; and upon any sale purporting to be made in exercise of the powers herein expressed or implied no purchase shall be bound to inquire as to the propriety or regularity of any such sale, or be affected by notice express or constructive that any such sale is improper or irregular.

And it is hereby declared and agreed that the grantee shall stand possessed of the proceeds of any such sale upon trust, after paying thereout the costs, charges, and expenses of and incidental to such taking possession, sale, and the preparation and registration of this or her instrument, to apply the same in reduction of the money then owing on the security of this or her instrument, including all money herein covenanted to be paid, notwithstanding that the same may not then have become due, or that any promissory notes or bills of exchange may then be current for the same, and to pay the balance to the grantor.

**POWERS, COVENANTS, AND PROVISIONS TO BE
IMPLIED IN INSTRUMENTS BY WAY OF
SECURITY OVER STOCK**

8. That, during the continuance of this or her security, the grantee, his or her agents or servants, may from time to time, and at reasonable times for that purpose, enter into and upon the said lands or premises, or any other lands or premises whereon the stock for the time being subject to this or her security are de-pasturing, for the purpose of viewing the state and condition of the same; and that the grantor will, upon receiving 7 days' previous notice in writing delivered to him or her personally or addressed to him or her through the ordinary course of post or otherwise at his or her last known place of abode in Samoa, give and afford to the grantee, his or her agents or servants, all reasonable assistance to enable the grantee, his or her agents or servants, to view the same accordingly.
9. That there are now de-pasturing upon the said lands and premises all the stock herein respectively mentioned as de-pasturing thereon. And that the grantor will not, during the continuance of this or her security, without first obtaining the grantee's consent in writing, further encumber the stock for the time being subject to this or her security, or change the general quality, character, or description of the same, or remove the same or any part thereof from the said

lands or premises, sell the same or any part thereof except in the ordinary course of business, but no sale shall be made so as to reduce the number of the stock stated in this or her security.

And that the grantor will, during the continuance of this or her security, at the usual and convenient time for so doing, well and properly brand, earmark, and mark, with the brand, earmark, and mark herein specified, all stock for the time being subject to this or her security, so that all such stock shall bear and continue to bear the brands, earmarks, and marks herein specified.

And will not without the leave in writing of the grantee brand, earmark, or mark, or permit to be branded, earmarked, or marked, any stock for the time being subject to this or her security with any brands, earmarks, or marks other than the brands, earmarks, and marks herein specified.

And will at all times during the continuance of this or her security take, use, and adopt all due and proper means for keeping and maintaining all stock now de-pasturing or that may during the continuance of this or her security be brought upon the said lands or premises or any part thereof, free from disease, and in clean and healthy condition: And will at all times during the continuance of this or her security pay and defray all expenses in and about the good and proper conduct and management of the said lands, stock and premises, and employ and maintain on the said lands or premises efficient and proper assistance to assist in the said conduct and management: And will every year, on demand by the grantee, render and deliver to him or her a return or account in writing setting forth the number, ages, and sexes of the stock for the time being subject to this or her security and the places where the same are de-pasturing or kept.

10. That all stock belonging to the grantor, branded, earmarked, or marked as aforesaid, or covenanted so to be, of which possession has been taken, under the power in that behalf herein contained, shall be subject to the same powers, provisions, declarations, and agreements as are herein expressed or implied of and concerning the stock and increase of stock herein expressed to be assigned, and may be dealt with in the same manner in all respects as if the stock of which possession is taken as aforesaid had formed part of the stock hereby assigned:

And that the grantor will, at this or her own cost and charges, do and execute all such deeds, matters, and things as may be necessary, or as the grantee may think proper, for the further,

better, and more perfectly assigning and assuring to the grantee the stock and increase of stock and all and singular the premises hereby assigned or intended so to be, or the stock for the time being on the said lands or premises, and any stock, branded, earmarked, or marked as aforesaid, or covenanted so to be, of which possession has been taken as aforesaid, so that the same may be held by the grantee upon and for the same ends, intents, and purposes, and with, under, and subject to the same powers, provisos, agreements, and declarations, as are herein expressed or implied of and concerning the stock and premises herein expressed to be assigned: And shall and will from time to time, and at all times during the continuance of this or her security, pay all and singular the licence fees and other outgoings and payments, and perform and observe all rules, regulations, and conditions which by the owner for the time being of the said stock or premises respectively now are or shall become at any time hereafter due, payable, observable, or performable respectively: And that in case the grantor fails or neglects to pay such licence fees and other outgoings and payments as aforesaid, or any of them or any part thereof, the grantee may make such payments respectively: And that the grantor shall and will from time to time and at all times hereafter, on demand, pay or cause to be paid to the grantee all sums of money paid or advanced by the grantee in or towards such payment as aforesaid, with interest for the same at the rate of \$5 percent per annum from the time or respective times when the same were advanced or paid: And that in the meantime, and until such sums of money have been repaid with interest as aforesaid, the stock for the time being subject to this or her security shall stand charged and chargeable with the payment of the same in like manner as if the same had been principal money secured by this or her instrument. That in case the grantee exercises any power of entry or taking possession vested in him or her hereunder, then he, or any person or persons appointed by him or her for the purpose, may continue in possession of the said stock and of the lands or premises whereon the same are de-pasturing or kept until the sale thereof, and manage, conduct, and carry on the said lands and stock, and employ servants and assistants, and provide all necessary stores in that behalf in all respects as the grantor could do if such power had not been exercised; and the grantee for any such purpose shall be entitled without any interference by the grantor to use all branding, earmarking, marking, and other implements and plant on or used in connection with the said lands or premises; and, further, that the costs, charges, and expenses of so doing, from the time of such entry and taking possession until the sale and delivery of the said stock and premises to any purchaser

thereof, shall, together with interest thereon at the rate aforesaid, until payment, be a charge upon the stock for the time being subject to this or her security.

**POWER TO BE IMPLIED IN INSTRUMENTS
BY WAY OF SECURITY OVER CROPS**

11. If the grantor does not pay to the grantee the money hereby secured, with interest and commission thereon as herein mentioned, at the time herein mentioned for payment of the same, the crops hereby assigned shall be gathered, carried away, and made marketable either by the grantor or by the grantee at the option of the grantee, but in either case at the expense of the grantor, and shall (if gathered by the grantor) be delivered by the grantor to the grantee or his or her order at the place of delivery herein mentioned or, if no such place is mentioned in the instrument, at such place as the grantee directs; and the grantee may either sell the same in Samoa, in one or more lots, by public auction or private contract, or partly in the one way and partly in the other, and upon such terms and conditions as to credit and otherwise as he or she thinks fit, or may cause the same to be shipped or exported to any place or places out of Samoa, to be sold by his or her agents in the manner and on the terms aforesaid, without being responsible for any loss or deficiency occasioned either by the shipment of the said crop or by any sale or sales thereof, whether in Samoa or elsewhere, or by the act, neglect, or default of any agent, broker, or other person; and may from the proceeds pay him or herself the money hereby secured, and any rent payable to any landlord, and any money payable to any mortgagee or other person that he or she may be compelled to pay in order to protect his or her security over the said crops, and all costs, mercantile and other charges, and expenses incurred in and about the harvesting, sale, shipment, and carrying away of such crops, and the storage and freight thereof, or on any other account connected with the realisation thereof and shall pay over the balance, if any, to the grantor.

**SCHEDULE 4
(Section 44)**

TRANSFER OF INSTRUMENT

I, C.D., of (*State residence and occupation of transferor*), the grantee (or grantor, *in case of an instrument by way of bailment*) of the instrument registered in the office of the Supreme Court at as No.

....., under the Chattels Transfer Act 1975, do, in consideration of (*State consideration*), hereby transfer to X.Y., of (*State residence and occupation of transferee*), the chattels comprised in the said instrument, and all my right, title, estate, and interest thereunder.

As witness under my hand this day of 20

C.D.

Signed by the said C.D. in the presence of:

E.F. (*Residence and occupation*)

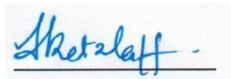
REVISION NOTES 2008 – 2017

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division in 2008 – 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date.
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General—
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “deemed” changed to “taken”
 - (vi) “notwithstanding” changed to “despite”
 - (vii) “pursuant to” changed to “under”
 - (viii) Numbers in words changed to figures
 - (ix) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (x) “etc.” deleted and provided complete sentences
 - (xi) Arrangement of provision made consistent with the text
 - (xii) Inserted empowering provisions for schedules and forms referred to in the schedules
 - (xiii) Inserted Parts (as reflected in the text and arrangement of provisions).
- (e) References to “his” has been amended to include “or her”.
- (f) Under section 47, insertion of “2001” after reference to the “Companies Act”.
- (g) Numbering for Parts changed from Roman numeral to decimal numbers.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Finance.*
