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# Annex E

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# Format for providing public comments to DIFCA on Consultation paper No. 5 of 2023

# Proposed Law of Security and Related DIFC Legislation

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| Note 1: DIFCA reserves the right to publish, including on its website, any comments you provide. However, if you wish to remain anonymous, you must expressly request at the time of making comments that this should be the case.  Note 2: The column titled ‘comments on proposed policy’ relates to the policy explained in the Consultation Paper (“CP”). The column titled ‘comments on proposed legislation’ refers to the draft legislation reflecting the proposed policy.  Note 3: It is possible that you may not have any comments, either on the proposed policy or legislation, or may have comments on one and not the other. You may leave a blank column if you either agree to the proposed position, or you have no concerns relating it.  Note 4: If there are any ambiguities relating to the proposed policy or legislation, you may raise those in your comments. |

| **Name of individual / entity providing comments:** |  |
| --- | --- |

| No. | Comments on proposed policy | Comments on proposed legislation |
| --- | --- | --- |
| Movables Immovables and Fixtures | | |
| Q1: Do you agree that, subject to conflict of laws issues, the Proposed Law should cover Security Rights in movable assets  that become fixtures (attached) to real property outside the jurisdiction of the DIFC? If not, please explain why not. | | |
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| Q2: Do you agree with Articles 90 to 97 of the Proposed Law? If not, please explain why not and any alternatives/modifications you may suggest? | | |
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| Q3: In relation to Article 21(1) of the Proposed Law, do you agree our (1) rationale for and (2) proposed wording? If not, please explain why not and what improvements do you suggest? | | |
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| Acquisition Financing | | |
| Q4: Do you agree that, subject to our proposed definition of Acquisition Security Right more widely, the assets falling within the scope of the ASR regime should be limited to Tangible Assets and to Intellectual Property or the rights of a licensee under a licence of Intellectual Property? If not, please explain why not. | | |
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| Q5: Do you agree that the interest of a lessor of Tangible Assets under a lease should be included within the definition of an Acquisition Security Right? | | |
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| Q6: Do you agree that the threshold for inclusion should be leases over one year? | | |
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| Q7: Do you agree that the interest of a consignor who delivers Tangible Assets to a consignee under a Commercial Consignment should be included in the definition of an Acquisition Security Right? If not, please explain any aspect of this which you disagree. | | |
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| **Q8: Do you agree with our provision for cross-collateralisation in accordance with paragraphs (4) and (5) of the definition of Acquisition Security Right? If not, please explain why not or suggest improvements that may be made.** | | |
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| **Q9: Do you agree with the retention of status as an ASR on renewal, refinancing, consolidation or restructuring? If not, please explain why.** | | |
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| **Q10: Do you agree that an ASR should not lose its status as such if the collateral also secured a non-ASR obligation?** | | |
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| **Q11: If you agree, are there any improvements you would suggest to paragraphs (6) and (7) of the definition of Acquisition Security Right?** | | |
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| **Q12: Do you agree with our proposed payment allocation rule at paragraph (9) of the definition of Acquisition Security Right? If not, what improvements do you suggest?** | | |
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| **Q13: Do you agree that Acquisition Security Rights should benefit from super-priority as provided in the Proposed Law? If not, please explain your reasoning.** | | |
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| **Q14: Do you have any further suggestions on how our proposals in relation to Acquisition Security Rights might be improved?** | | |
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| Negotiable Instruments/Documents and Electronic Trade Documents | | |
| **Q15: Are there any aspects of the proposed amendments to the Law of Obligations in relation to electronic trade documents that can be improved?** | | |
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| **Q16: Do you agree with our proposals in the Proposed Law in relation to Negotiable Instruments and Negotiable Documents that are Electronic Trade Documents?** | | |
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| **Q17: Are there any aspects of the Proposed Law in this respect which could be improved?** | | |
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| Receivables | | |
| **Q18: Do you agree with the proposed amendment to Article 94(1) of the Contract Law?** | | |
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| **Q19: Taking into account the Proposed Law in relation to receivables, do you agree that the Proposed Law should not follow the exclusions at Art 9(3)(b) to (e) of the Current Law.** | | |
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| **Q20: Do you have further any suggestions on how the Proposed Law in relation to Receivables might be improved?** | | |
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| Financial Collateral Arrangements | | |
| **Q21: Do you agree with our proposed asset classes for an “FCR Receivable”? If not, what types of asset classes should be removed or added?** | | |
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| **Q22: Do you agree with the proposed lack of limitation on collateral providers? If not, what modifications/alternatives do you suggest?** | | |
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| **Q23: Do you agree with our proposed limitation on collateral takers? If not, what modifications/alternatives do you suggest?** | | |
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| **Q24: Do you agree that a Secured Creditor with a Security Right in Financial Collateral should be able to make that right effective against third parties by registration?** | | |
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| **Q25: Do you agree that a Secured Creditor with a Security Right in Financial** **Collateral should also be able to benefit from the Part 8 regime, by reason only of registration (subject to the rules on Priority in Article 102, which are considered below)?** | | |
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| **Q26: Do you agree with the Priority rules in Article 102 of the Proposed Law? If not, why not and what modifications/alternatives would you suggest?**  **only of registration (subject to the rules on Priority in Article 102, which are considered below)?** | | |
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| **Q27: Do you agree that Digital Assets that are also Money Credited to a Bank Account or Financial Property should be treated in the same way as such Financial Collateral that are not Digital Assets?** | | |
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| **Q28: If you disagree, what modifications/alternatives would you suggest?** | | |
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| **Q29: Do you have any further comments on any other aspects of Part 8 of the** **Proposed Law, including how it may be improved?** | | |
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| Digital Assets | | |
| **Q30: Do you agree that it should also be possible to make a Security Right in a Digital Asset effective against third parties by Control**  **of the Digital Asset?** | | |
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| **Q31: Do you agree that a Security Right in a Digital Asset made effective by Control should have Priority over a competing Security Right made effective by registration?** | | |
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| **Q32: Do you agree that Articles 17(2) and 26 should also apply to Digital Assets?** | | |
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| Transfer of Digital Assets | | |
| **Q33: Do you agree with our proposed approach in Article 14?** | | |
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| Consumer protection | | |
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| **Q34: What is the appropriate threshold for the purposes of Article 31 of the Proposed Law?** | | |
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| **Q35: Subject to your views on the appropriate threshold for Article 31, do Articles 41 and 46 strike the correct balance between the interest of consumers and providers of acquisition financing?** | | |
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| **Q36: What (if any) consumer protections should be introduced in relation to Receivables?** | | |
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| **Q37: Do you have any further comments on how the law in relation to consumer protection and security rights might be improved?** | | |
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| Conflict of Laws | | |
| **Q38: Do you have any comments on the conflict of laws in Articles 105-122 of the Proposed Law?** | | |
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| **Q39: Pending the outcome of our anticipated consultation on conflict of laws in the context of Digital Assets and Electronic Trade Documents, do you see any downsides to the adoption of Article 122 of the Proposed Law?** | | |
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| The Security Registry, filing and registration | | |
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| **Q40: Are there any aspects of Part 11 that could be removed?** | | |
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| Transitional provisions | | |
| **Q41: Is a transitional period of one year appropriate?** | | |
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| **Q42: Are there any aspects of Schedule 1 that could be improved?** | | |
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| Miscellaneous and General Comments | | |
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