

ANGUILLA

# REVISED STATUTES OF ANGUILLA

# CHAPTER F10

# FACTORS ACT

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# FACTORS ACT

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# FACTORS ACT

## Interpretation

**1.** In this Act—

"agent" means such agents only as in the usual course of business sell goods for their principals and receive payments, such as factors, brokers, etc.;

"document of title" shall include any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, warrant or order for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented.

## Agent deemed to be true owner for certain purposes

**2.** (1) Any person entrusted for the purpose of consignment or of sale with any goods, wares, or merchandise, who shall have shipped such goods, wares, or merchandise in his own name, and any person in whose name any goods, wares or merchandise shall be shipped by any other person, shall be deemed and taken to be the true owner thereof so far as to entitle the consignee of such goods, wares, and merchandise to a lien thereon in respect of any money, or negotiable security or securities, advanced or given by such consignee to or for the use of the person in whose name such goods, wares, or merchandise shall be shipped, or in respect of any money, or negotiable security or securities, received by him to the use of such consignee, in the like manner to all intents and purposes as if such person were the true owner of such goods, wares, or merchandise, if such consignee shall not have notice by the bill of lading for the delivery of such goods, wares, or merchandise, or otherwise, at or before the time of the advance of any such money or negotiable security, or of such receipt of money or negotiable security, in respect of which such lien is claimed, that such person so shipping in his own name, or in whose name any goods, wares, or merchandise shall be shipped by any person, is not the actual and *bona fide* owner or proprietor of such goods, wares, or merchandise so shipped as aforesaid; any law, usage, or custom to the contrary thereof in anywise notwithstanding.

(2) The person in whose name any such goods, wares, or merchandise are so shipped as aforesaid shall be taken, for the purposes of this Act, to have been entrusted therewith for the purposes of consignment or sale, unless the contrary thereof shall be made to appear by any person disputing such fact.

## Person entrusted with and in possession of document of title to goods to be deemed owner for certain purposes

**3.** (1) Any person entrusted with and in possession of any document of title to goods shall be deemed and taken to be the true owner of the goods, wares, and merchandise described and mentioned in such document so far as to give validity to any contract or agreement made or entered into by such person with any person for the sale or disposition of the goods, wares, and merchandise, or any part thereof, or for the deposit or pledge thereof, or any part thereof, as a security for any money or negotiable instrument advanced or given by such person upon the faith of such document, if such persons shall not (except in the case of an agent hereinafter provided for) have notice by such document or otherwise, that such person so entrusted as aforesaid is not the actual and *bona fide* owner or proprietor of such goods, wares or merchandise so sold or deposited or pledged as aforesaid, any law, usage or custom to the contrary notwithstanding.

(2) In case any person shall accept and take any such goods, wares or merchandise in deposit or pledge from any such person so in possession and entrusted as aforesaid, without notice as aforesaid, as a security for any debt or demand due and owing from such person so entrusted and in possession as aforesaid to such person before the time of such deposit or pledge, then and in that case such person so accepting or taking such goods, wares, or merchandise in deposit or pledge shall (except in a case where the person so in possession as aforesaid is an agent within the meaning of this Act, and can, under the provisions of this Act, give a further right, title, or interest) acquire no further or other right, title, or interest in or upon or to the goods, wares, or merchandise, or any such document as aforesaid, than was possessed or could or might have been enforced by the person so possessed and entrusted as aforesaid at the time of such deposit or pledge as a security as last aforesaid, but such person so taking such goods, wares, or merchandise in deposit or pledge shall and may acquire, possess and enforce such right, title, or interest as was possessed and might have been enforced by such person so possessed and entrusted as aforesaid, any rule of law, usage, or custom to the contrary notwithstanding.

**Known agent entrusted with goods or to whom goods are consigned, may make valid contracts for sale**

**4.** Any person may contract with any agent entrusted with any goods, wares, or merchandise, or to whom the same may be consigned, for the purchase of any such goods, wares, or merchandise, and may receive the same of, and pay for the same to, such agent, and such contract and payment shall be binding upon and good against the owner of such goods, wares, or merchandise, notwithstanding such person shall have notice that the person making and entering into such contract, or in whose behalf such contract is made and entered into, is an agent, if such contract and payment is made in the usual and ordinary course of business, and that such person shall not, when such contract is entered into or payment made, have notice that such agent is not authorised to sell the goods, wares, or merchandise, or to receive the purchase money.

**Known agent may make a valid contract of pledge**

**5.** Any agent who shall be entrusted with the possession of goods, or of the documents of title to goods, shall be deemed and taken to be the owner of such goods and documents so far as to give validity to any contract or agreement by way of pledge, lien or security *bona fide* made by any person with such agent so entrusted as aforesaid, as well as for any original loan, advance, or payment made upon the security of such goods or documents, as also for any further or continuing advance in respect thereof; and such contract or agreement shall be binding upon and good against the owner of such goods, and all other persons interested therein, notwithstanding the person claiming such pledge or lien may have had notice that the persons with whom such contract or agreement is made is only an agent.

***Bona fide* deposits in exchange protected**

**6.** Where any such contract or agreement for pledge, lien, or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandise, or document of title or negotiable security, upon which the person so delivering up the same had at the time a valid and available lien and security for and in respect of a previous advance by virtue of some contract or agreement made with such agent, such contract and agreement, if *bona fide* on the part of the person with whom the same may be made, shall be deemed to be a contract, made in consideration of an advance within the true intent and meaning of this Act, and shall be as valid and effectual, to all intents and purposes, and to the same extent, as if the consideration for the same had been a *bona fide* present advance of money, but the lien acquired under such last-mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the

time of the goods and merchandise which, or the documents of title to which, or the negotiable security which, shall be delivered up and exchanged.

**Agent entrusted with possession**

**7.** (1) Any agent entrusted with the possession of goods, or of the documents of title to goods, and possessed of any document of title whether derived immediately from the owner of the goods, or obtained by reason of such agent having been entrusted with the possession of the goods, or of any other document of title thereto, shall be deemed and taken to have been entrusted with the possession of the goods represented by such document of title as aforesaid, and all contracts pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges of, and liens upon, the goods to which the same relates.

(2) Such agent shall be deemed to be possessed of such goods or documents, whether the same shall be in his actual custody, or shall be held by any other person subject to his control, or for him or on his behalf.

(3) An agent in possession, as aforesaid, of such goods or documents shall be taken, for the purposes of this Act, to have been entrusted therewith by the owner thereof, unless the contrary can be shown in evidence.

**Revocation of agency, if unknown, not to affect *bona fide* contract**

**8.** Where any agent or person has been entrusted with, and continues in, the possession of any goods, or documents of title to goods, within the meaning of this Act, any revocation of his entrustment or agency shall not prejudice or affect the title or rights of any other person who, without notice of such revocation, purchases such goods or makes advances upon the faith or security of such goods or documents.

**What to be deemed a loan on the security of goods**

**9.** (1) Where any loan or advance shall be *bona fide* made to any agent entrusted with, and in possession of, any goods or documents of title, on the faith of any contract or agreement in writing to consign, deposit, transfer, or deliver such goods or documents of title, and such goods or documents of title shall actually be received by the person making such loan or advance without notice that such agent was not authorised to make such pledge or security, every such loan or advance shall be deemed and taken to be a loan or advance on the security of such goods or documents of title within the meaning of this Act, though such goods or documents of title shall not actually be received by the person making such loan or advance, till the period subsequent thereto.

(2) Any contract or agreement made direct with such agent as aforesaid, or with any clerk or other person on his behalf, shall be deemed a contract or agreement with such agent.

(3) Any payment made whether by money, or bills of exchange, or other negotiable security shall be deemed and taken to be an advance within the meaning of this Act.

**Scope of protection of Act**

**10.** This Act and every matter and thing herein contained shall be deemed and construed to give validity to such contracts and agreements only, and to protect only such loans, advances, and exchanges as shall be made *bona fide* and without notice that the agent making such contract or agreement as aforesaid has not authority to make the same, or is acting *mala fide* in respect thereof against the owner of such goods or merchandise. And nothing herein contained shall be construed to

extend to, or protect, any lien or pledge, for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge, shall be given; or to authorize any agent entrusted as aforesaid in deviating from any express orders or authorities received from the owner, but that, for the purpose and to the intent of protecting all such *bona fide* loans, advances, or exchanges as aforesaid (though made with notice of such agent not being the owner, but without any notice of the agent's acting without authority), and to no further or other intent or purpose, such contract or agreement as aforesaid shall be binding on the owner and all other persons interested in such goods.

**Vendee permitted to have possession of documents of title**

**11.** Where any goods have been sold or contracted to be sold, and the vendee, or any person on his behalf, obtains the possession of the documents of title thereto from the vendor or his agents, any sale, pledge, or disposition of such goods or documents by such vendee so in possesion, or by any other person or agent entrusted by the vendee with the documents, within the meaning of this Act, shall be as valid and effectual as if such vendee or other person were an agent or person entrusted by the vendor with the documents within the meaning of this Act, if the person to whom the sale, pledge, or other disposition is made has not notice of any lien or other right of the vendor in respect of the goods.

**Vendors permitted to retain documents of title**

**12.** Where any goods have been sold, and the vendor or any person on his behalf continues or is in possession of the documents of title thereto, any sale, pledge, or other disposition of the goods or documents made by such vendor, or any person or agent entrusted by the vendor with the goods or documents within the meaning of this Act, so continuing or being in possession, shall be as valid and effectual as if such vendor or person were an agent or person entrusted by the vendee with the goods or documents within the meaning of this Act, if the person to whom the sale, pledge, or other disposition is made has not notice that the goods have previously been sold.

**Right of true owner to recover goods in hands of agent or his trustee in bankruptcy**

**13.** Nothing herein contained shall be deemed, construed, or taken to deprive or prevent the true owner or proprietor of any goods, wares, or merchandise from demanding or recovering the same from his factor or agent before the same shall have been sold, deposited, or pledged in accordance with the provisions of this Act, or from the trustee of such factor or agent in the event of his bankruptcy; or to prevent such owner or proprietor from demanding or recovering of or from any person the price or sum agreed to be paid for the purchase of such goods, wares, or merchandise, subject to any right of set off on the part of such person against such factor or agent; or to prevent such owner as aforesaid from having the right to redeem such goods or documents of title, pledged as aforesaid, at any time before such goods shall have been sold, upon repayment of the amount of the lien thereon, or restoration of the securities in respect of which such lien may exist, and upon payment or satisfaction to such agent, if by him required, of any sum of money for, or in respect of which such agent would by law be entitled to retain the same goods or documents, or any of them, by way of lien as against such owner; or to prevent the owner from recovering of and from such person with whom any such goods or documents may have been pledged, or who shall have any such lien thereon as aforesaid, any balance or sum of money remaining in his hands as the produce of the sale of such goods, after deducting the amount of the lien of such person under such contract or agreement as aforesaid, but, in case of the bankruptcy of any such agent, the owner of the goods which shall have been so redeemed by such owner as aforesaid shall, in respect of the sum paid by him on account of such agent for such redemption, be held to have paid such sum for the use of such agent before his bankruptcy, or in case the goods shall not be so redeemed, the owner shall be deemed a creditor of

such agent for the value of the goods so pledged at the time of the pledge; and shall, if he shall think fit, be entitled, in either of such cases, to prove for or set off the sum so paid or the value of such goods, as the case may be.

**Agent civilly liable for breach of duty**

**14.** Nothing herein contained shall lessen, vary, alter, or affect the civil responsibility of an agent for any breach of duty or contract, or non-fulfilment of his orders or authority, in respect of any such contract, agreement, lien, or pledge as aforesaid.

**Vendor's lien and right of stoppage *in transitu*, when defeated by transfer of document of title**

**15.** Where any document of title to goods has been lawfully endorsed or otherwise transferred to any person as a vendee or owner of the goods, and such person transfers such document by endorsement (or by delivery when the document is by custom, or by its express terms, transferable by delivery, or makes the goods deliverable to the bearer) to a person who takes the same *bona fide* and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as a transfer of a bill of lading has for defeating the right of stoppage *in transitu*.

**Citation**

**16.** This Act may be cited as the Factors Act, Revised Statutes of Anguilla, Chapter F10.