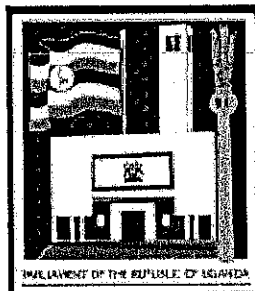
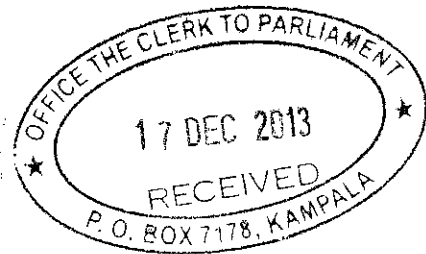


Concluded on 19/12/13



PARLIAMENT OF UGANDA

REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE CHATTELS SECURITIES BILL, 2009

OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDINGS
KAMPALA - UGANDA

December 2013

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Introduction

The Committee on Legal and Parliamentary Affairs considered the Chattels Securities Bill, 2009 and now wishes to report.

The Chattels Securities Bill, 2009 was read for the first time on 20th October 2009 in the 8th Parliament. It was re-introduced by a Resolution of Parliament in the 9th Parliament on 31st October 2011 and re-read for the first time on 23rd February 2012. It was referred to the Committee on Legal and Parliamentary Affairs in accordance with Rules 117 and 118 of the Rules of Procedure of Parliament.

In analyzing the Bill, the Committee was guided by Rule 118 of the Rules of Procedure of Parliament.

2.0 Background

A "chattel" in the bill is defined as *"any moveable property that can be completely transferred by delivery, and includes machinery, book debts, stock and the natural increase of stock, crops and wool but does not include – title deeds, shares or interests in the stock, funds or securities of any government or local authority or corporate body and debentures and interest coupons issued by a Government, local authority, company or local body."*

Chattels security deals with giving of personal property or chattels other than land as security for a loan or debt.

3.0 Methodology

In the process of analysing the Bill, the Committee discussed the Bill and received memoranda from the following stakeholders;

1. Ministry of Justice and Constitutional Affairs/ The Attorney General's Chambers,

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2. Uganda Law Reform Commission,
3. Law Development Center,
4. Uganda Registration Services Bureau,
5. Private Sector Foundation Uganda (PSFU),
6. Association of Microfinance Institutions in Uganda.
7. The Uganda Banker's Association

The Committee conducted benchmarking study tours to Nairobi - Kenya, Accra - Ghana, Port Louis - Mauritius, Kuala-Lumpur - Malaysia, London - United Kingdom and Harare - Zimbabwe.

The Committee would like to acknowledge and appreciate the Justice Law and Order Sector (JLOS) for availing funds for the Committee to conduct a study tour in Kenya; and to the Uganda Banker's Association for funding the Committee's visit to Ghana.

4.0 Objective of the Bill

The objective of the Bill is to regulate the making and enforcement of security interests in chattels, to repeal the Chattels Transfer Act Cap. 70 and for related purposes.

5.0 Observations and Recommendations

The Committee observed that;

- i. The bill is necessary since the current law governing transfer of chattels i.e. the Chattels Transfer Act Cap. 70 is archaic and obsolete.
- ii. The current law has also not been put to much use since the use of Chattels as collateral for repayment of a debt is not well developed in Uganda.

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- iii. While the current law has been in place since 1978, it has rarely been applied due to its archaic and complex provisions.
- iv. This law will achieve the intended overhaul of the present legal regime and provide adequately for a chattels securities law commensurate with Uganda's state of development, social circumstances and promotion of private investment.
- v. It is critical to pass this law to address the concerns raised by the citizens particularly in the rural areas where the use of chattels as security is more in keeping with the local situation.

6.0 Recommendation

The Committee recommends that the Bill be passed into law subject to the proposed amendments.



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PROPOSED AMENDMENTS TO CHATTELS SECURITIES BILL 2009

1. Clause 2: Definition of chattel

- a) Amend the definition of chattel by inserting the words '*property in respect of which a valid document of title exists*' after the word 'wool' in the fourth line of the provision.
- b) Substitute for the word 'and' in the third line of the provision with 'or'.

Justification

- To ensure that the definition of chattel clearly gives a sufficiently wide coverage of goods that would be otherwise used as security.

2. Clause 2: definition of Minister

Substitute for the word 'trade' with Justice and Constitutional Affairs

Justification

- The implementing body of the law shall be the Uganda Registration Services Bureau which falls under the Ministry of Justice and Constitutional Affairs and not Ministry of Trade.

3. Clause 6

- a) Amend clause 6(1) (a) (ii) by substituting the provision with the following:


"receives actual or has constructive notice of the fact"


- b) Delete Sub-clauses 6(b), 6(c) and 6(d).

Justification

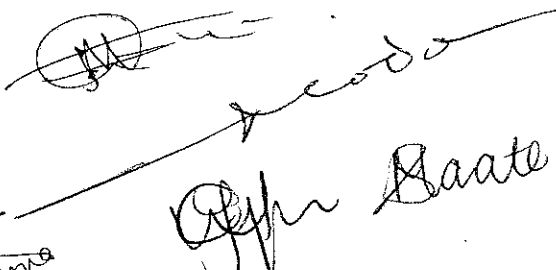
- To provide for a wider definition of 'knowledge' in clause 6 to include actual or constructive knowledge in express terms in order to address clause 23 (2) and 24 (1). *If the Bill limits the meaning of 'knowledge' to actual notice, then holders of security interests shall be seriously prejudiced by the provisions of clauses 23 and 24 of the Act. This is because the effect of these provisions shall be to render the perfection of the security nugatory. This position should be addressed by amending Clause 6, which provides for the meaning of 'knowledge'.*


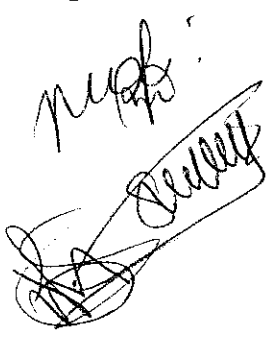

Campbell


Kababumba




Hakuna


Gyere Saate



Mupfema

c) Substitute for clause 6(2) the following provisions:

6(2) "A person shall be deemed to have received constructive notice of a fact if the circumstances are such that, that person would be reasonably expected to have been aware of that fact.

6(3) Circumstances from which constructive notice under this section can be imputed shall include the following:

(a) where an agent or employee of that person has actual notice of the fact;

(b) where notice is in respect of the existence of a security interest, the whole public shall be deemed to have constructive notice of that security interest upon registration of the relevant Instrument."

Justification

- To provide for the effect of registration so that registration can be deemed to impart constructive notice of the security interest upon the public.

4. Clause 7: Notice to be in writing

Replace clause 16 with clause 15

Justification

- To correct an error in the cross referencing.

5. Clause 9: Creation of Security Interest.

- Deleted clause 9(2)

Justification

- The provision states that a security interest may be created by a transfer of receivables, even where the transfer does not secure a payment. Transfer receivables that don't secure payments should not be considered for purposes of creating a security interest.

A security interest that does not secure payment or the performance of an obligation does not serve the purpose of creating a security interest and should therefore, not be covered by the Bill.

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6. Clause 11: Attachment of Security Interest.

- (i) Delete the comma appearing after the word 'charge' in the first line of the provision
- (ii) Insert a new clause 11(3) as follows.

(3) A floating charge shall not seek to cover the assets of the debtor generally, but shall relate only to assets that are either ascertainable, ascertained or form a portion of a divisible stock or collection of assets whether similar or diverse and can be segregated from and existed separately from the stock or collection;

Justification

- To ensure that a floating charge is not stretched to cover the debtors personal assets.

7. Clause 37: Register of chattels security.

Insert a new sub-clause 37 (2) as follows:

'The Register shall clearly specify the nature of the security interest registered and details of the chattel over which the interest is created.'

Justification

- To specify the contents of the register.

8. Clause 39(b): Mode of registration.

Amend clause 39 (b) by deleting the words appearing after the words statutory declaration.

Justification

- Photocopies of documents cannot be used to register an instrument. If original copies are misplaced before registration, then it is advisable for the parties to sign fresh documents. If registration of photocopies were to be allowed, they would promote fraud and forgeries.

9. Clause 40(4): Registration

Amend clause 40(4) by inserting the word 'one' between the words 'twenty' and working in the second line of the provision.

Justification

- For consistency in the time frame stipulated in clause 40(1)

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10. Clause 79: Notice of sale.

Amend clause 79 (3) (a) by substituting the provision with the following:

(a) *"any other secured party"*

Justification

- There is no need for a secured party to give notice of sale to himself or herself.

11. Creation of an Electronic Registry

(i) Insert a new clause 38(2) as follows:

The register may be maintained as an electronic records system.

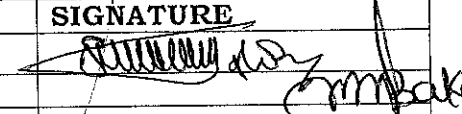
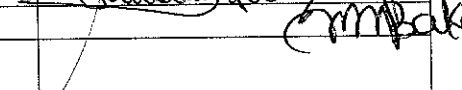
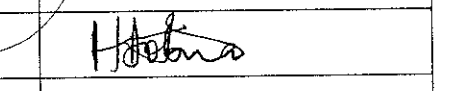

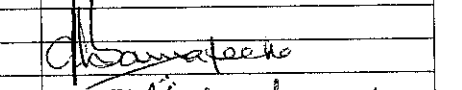
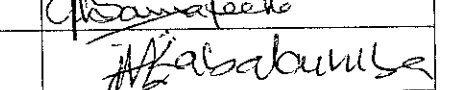
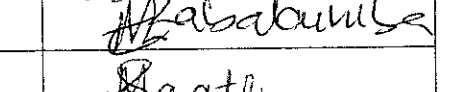
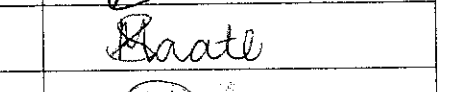
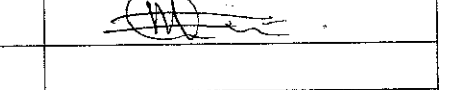
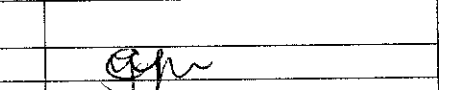
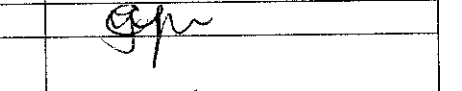
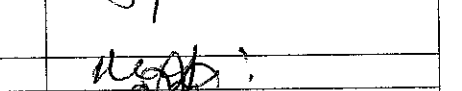
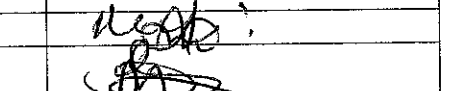
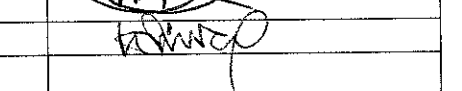
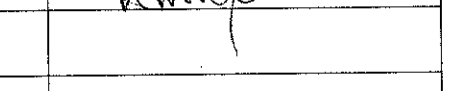
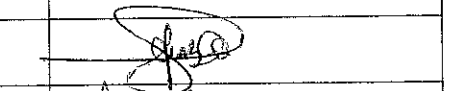

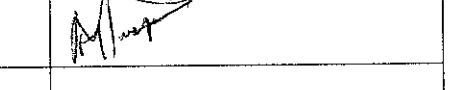

Justification

- *To provide for creation of an electronic register*

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COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS

Signatures for Attachment to the Report of the Committee on Legal and Parliamentary Affairs on the Chattels Securities Bill, 2009

NO.	NAME	CONSTITUENCY	PARTY	SIGNATURE
1.	Hon. Tashobya Stephen	Kajara	NRM	
2.	Hon. Baka Stephen	Bukooli North	NRM	
3.	Hon. Achia Remigio	Pian	NRM	
4.	Hon. Obua Denis Hamson	Ajuri	NRM	
5.	Hon. Timbigamba Lyndah	Kyenjojo	NRM	
6.	Hon. Musinguzi Yona	Ntungamo	NRM	
7.	Hon. Kamateeka Jovah	Mitooma	NRM	
8.	Hon. Kabakumba Masiko	Bujenje	NRM	
9.	Hon. Nyirabashitsi Sarah Mateke	Kisoro	NRM	
10.	Hon. Nyakecho Okwenye Annet	Otuke	NRM	
11.	Hon. Ochua David	Agule	NRM	
12.	Hon. Nakayenze Connie	Mbale	NRM	
13.	Hon. Byarugaba Alex Bakunda	Isingiro South	NRM	
14.	Hon. Amoding Monica	Youth Female	NRM	
15.	Hon. Mbabazi Betty	Woman Rep. Rubirizi	NRM	
16.	Hon. Wilfred Niwagaba	Ndorwa East		
17.	Hon. Lt. Col. Sarah Mpabwa	UPDF		
18.	Hon. Abdu Katuntu	Bugweri	FDC	
19.	Hon. Medard Lubega Ssegona	Busiro East	DP	
20.	Hon. Joseph Balikuddembe	Busiro South	DP	
21.	Hon. Brenda Nabukenya	Luwero	DP	
22.	Hon. Paul Mwiru	Jinja Mun East	FDC	
23.	Hon. Chrispus Ayena	Oyam North	UPC	
24.	Hon. Jennifer Mujungu	Woman Rep. Ntoroko	Indep	
25.	Hon. Sam Amooti Otada	Kibanda	Indep	
26.	Hon. Fox Odoi Oywelowo	West Budama North	Indep	
27.	Hon. Gerald Karuhanga	Youth Western	Indep	