

**BILLS
SUPPLEMENT No. 1**

BILLS SUPPLEMENT

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2nd February, 2018.

Bill No. 1 Security Interest In Movable Property Bill 2018

THE SECURITY INTEREST IN MOVABLE PROPERTY BILL, 2018

MEMORANDUM

1. OBJECT OF THE BILL

The object of this Bill is to provide for the use of movable property as collateral for credit; to provide for the creation and perfection of security interests; to provide for the rules for determining priority of claims among competing claimants; to provide for the registration of security interests in movable property by notices; to provide for a register of security interests in movable property; to provide for the enforcement of security interests, search of the register and for related matters.

2. DEFECTS IN THE EXISTING LAW

The Bill arises out of the inadequacies in the Chattels Securities Act, 2014, Act No. 7 of 2014. The inadequacies include the narrow scope of types of movable assets that can be used as collateral, the exclusion of judgment liens, negotiable instruments, debentures and intangible assets such as intellectual property rights, shares and securities. The Chattels Securities Act, 2014 envisaged a manual register which according to international best practice may not be effective for putting third parties on notice of the actual or possible existence of a security interest. The Bill therefore proposes the inclusion of the intangible assets and the removal of unnecessary formalities in creating and registering a security interest. Due to these inadequacies, the Act was not brought into force resulting in the Chattels Transfer Act, Cap 70 still being in force and rendering an obsolete and ineffective legal regime.

In addition to addressing the inadequacies in the Act, the Bill seeks to give effect to Vision 2040, the Second National Development Plan 2015/16 - 2019/20 through sustainable development and wealth creation. The Second National Development Plan specifically provides that inadequate financing and financial services is one of Uganda's most binding constraints on development. The Bill once enacted into law will increase access to credit by Micro, Small and Medium Enterprises (MSMEs) and women and youth entrepreneurs who generally lack individual titled land and buildings by providing them with a wider scope of movable properties that can be used as collateral for credit, thereby significantly reducing the fast rising unemployment.

3. PROVISIONS OF THE BILL

The Bill contains seven Parts and 53 clauses as follows—

Part I of the Bill, (incorporating clauses 1-3) provides for preliminary matters including the power of the Minister to appoint the commencement date of the Act and terms and definitions used in the bill which reflect international best practices and modern business use.

Clause 3 provides for the scope of the Bill and covers any type of security interest that secures an obligation with movable property; including motor vehicles, judgment liens, stock for trade, shares, livestock and crops and negotiable instruments and money.

Part II of the Bill (incorporating clauses 4-7) provides for creation of security interests. A security interest is created by written agreement between a secured creditor and a grantor. The agreement, among other means, becomes enforceable where the grantor has a right in the collateral or has the power to encumber the collateral. Clause 4 simplifies the creation of security interests, by eliminating unnecessary burdens that add time and expense to the credit acquisition process. Clause 5 extends the security interest in the collateral to the proceeds of the collateral even after sale or transfer of the collateral, unless otherwise agreed by the parties. Clauses 6 and 7 provide guidance on commingled goods and security interests in intellectual property.

Part III- (incorporating clauses 8-11) provides for perfection of security interests. Perfection gives public notice of the potential existence of a security interest. The essence of perfection is that it makes the security interest effective against any claims by third parties. Clause 8 provides for the three methods for achieving perfection of a security interest; namely, registration, possession and control. Clause 9 addresses automatic perfection of security interests in proceeds in the form of money, account receivables, negotiable instruments or right to payment of funds to a bank account. Clause 10 requires the filing of an amendment notice in cases where all or part of a security interest that is perfected by registration has been transferred while clause 11 provides for the continuation of a security interest perfected outside Uganda, notwithstanding the relocation or transfer of the property to Uganda.

Part IV- (incorporating clauses 12-22) provides for registration of security interests in movable property. Registration of security interests instills confidence in creditors and enables the creditors to lend at affordable rates. The benefits of registration of security interests is that it puts third parties on notice of the actual or possible existence of a security interest and enables the establishment of priorities in a timely manner.

Clause 12 establishes an electronic notice register of security interests in movable property to be maintained by the Uganda Registration Services Bureau. The electronic register is adopted from international best practice and is intended to facilitate access to affordable credit by firms, MSMEs, women, youth and poor entrepreneurs that do not own individual titled land or buildings. Clause 13 specifies the registration procedures and requires the secured creditor to obtain the grantor's authorisation prior to filing a notice of a security interest. Clause 14 provides for registration of a single notice for two or more security interests created by the same grantor under two or more security interest agreements with the same secured creditor, while clause 15 deals with registration of a lien. Approval of the subject of the lien is not required. Clause 16 limits the information required in

an initial notice to the unique identification number and address of the grantor, the unique identification number and address of the secured creditor, a description of encumbered movable assets and the date and period of perfection and clause 17 limits the period of perfection of the initial notice to a maximum of 5 years, although that period may be extended by an amendment notice.

Clause 18 provides for amendments and cancellation of notices by secured creditors. Clause 19 allows a person to register an objection notice if he or she believes that a notice was inaccurately or wrongfully registered and clause 20 confirms that the information in the registry is publicly accessible and that anyone may access the information in the registry.

Clause 21 allows a secured creditor to amend or cancel notices and the registrar to archive a notice for 10 years, after which the notice may be removed from the register. Clause 22 limits the liability of the Registrar for actions done in good faith.

Part V- (incorporating clauses 23-34) provides for the priority of security interests and competing claims. Clauses 23 and 24 generally deal with priorities of perfected security interests, with the highest priority going to the first to perfect. Under clause 25, the change in the means of perfection does not necessarily affect priority, provided there is no lapse in perfection. Clauses 26 to 31 establish priority rules over proceeds, commingled goods, accessions, fixtures, crops and negotiable instruments.

Clause 32 establishes the rights of bonafide purchasers, lessees, licensees and transferees of collateral that are acquired in the ordinary course of business. Clause 33 gives vendors and other creditors a special priority interest in the collateral for which they provide acquisition funding and clause 34 prioritizes a security interest in a negotiable instrument that is perfected by possession of the negotiable instrument over a security interest in the negotiable instrument that is perfected by registration of a notice in the Register.

Part VI- (incorporating clauses 35-49) provides for the enforcement of security interests. The Part provides for out of court settlements under prescribed circumstances. The secured

creditor may take possession of the collateral of a defaulting borrower where, for example, the grantor consents in writing to the secured creditor taking possession of the collateral for purposes of disposal to recover the debt without a court order. With out of court settlements, it is expected that the lead time for settling disputes will be reduced, the foreclosure process will be expedited and the value of collateral will be preserved. It is further expected that peaceful and non-judicial enforcement mechanisms will instill confidence in the creditors that in the event of default, the creditors can avoid long, costly and burdensome court proceedings to enforce their rights. The borrower will also be provided a faster and cheaper option of resolving the default dispute, especially where the creditor and defaulter agree that there is indeed a default.

Clause 35 limits the applicability of the enforcement provisions to those security interests created under the Bill, with the exception of the outright transfer of accounts receivables, commercial consignments and operating leases. Clause 36 prohibits a debtor and grantor from waiving any rights before default and clause 37 grants the secured creditor the right to possess the collateral and the right to sell the collateral upon default of the debtor, without judicial process.

Clause 38 authorises the secured creditor or lien holder whose right has priority over that of the enforcing creditor or enforcing lien holder to take over the enforcement at any time before the sale or disposition of the collateral or the conclusion of an agreement by the secured creditor for the sale or disposition of the collateral. Clause 39 authorises a secured creditor to proceed in certain situations involving cash or cash substitutes, without judicial process and clause 40 provides for an expedited and peaceful process for obtaining possession of collateral with or without a court order. Clause 41 provides disposition options including sale, lease or licensing of collateral, subject to certain conditions, as well as providing the debtor and other interested parties with notice prior to property disposition.

Clauses 42 and 43 provide for the distribution of proceeds from the disposition of collateral, based on the priorities established by the Bill, and provides for the payment of any reasonable expenses incurred in connection with the taking, possession and sale of the collateral while clause 44 requires the secured creditor to provide a written statement of account, to the persons entitled, after the disposal of the collateral.

Clause 45 allows the the secured creditor to acquire all or part of the collateral in total or partial satisfaction of the obligation of the debtor, upon default. Clause 46 provides for objections to a notice of acquisition while clause 47 allows the grantor or other person with an interest in the collateral to stop the enforcement process and redeem the collateral by paying all amounts due and owing. Clause 48 gives the buyer or transferee of the collateral the rights of the grantor in the collateral free of the rights of the enforcing secured creditor and any competing claimant and clause 49 gives court the discretion to order or restrain the sale or disposition of collateral if the secured creditor does not comply with the provisions of the Act.

Part VII of the Bill (incorporating clauses 50- 53) deals with general provisions.

Clause 50 allows the Registrar General to impose administrative penalties for failure to comply with the provisions of the Act. Clause 51 creates offences and imposes penalties for fraudulent, false, frivolous or malicious acts and clause 52 empowers the Minister of Justice to issue regulations with respect to any matter that is necessary for giving effect to the provisions of the Act. Clause 53 repeals the Chattels Securities Act, 2014.

MAJ. GEN. (RTD) KAHINDA OTAFIRE,
Minister of Justice and Constitutional Affairs.

THE SECURITY INTEREST IN MOVABLE PROPERTY BILL, 2018

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A BILL for an ACT

ENTITLED

**THE SECURITY INTEREST IN MOVABLE PROPERTY
BILL, 2018**

An Act to provide for the use of movable property as collateral for credit, to provide for the creation and perfection of security interests; to provide for the rules for determining priority of claims among competing claimants; to provide for the registration of security interests in movable property by notices; to provide for a Register of Security Interests in movable property; to provide for the enforcement of security interests, search of the register and for related matters.

PART I— PRELIMINARY

1. Commencement.

This Act shall come into force on a date appointed by the Minister, by statutory instrument.

2. Interpretation.

In this Act, unless the context otherwise requires—

“accession” means a tangible asset that is installed in or is physically attached to, another movable property in such a manner that the identity of the tangible asset is not lost;

“account receivable” means a payment of a monetary obligation that is not evidenced by a negotiable instrument or an investment security;

“acquisition security right” means a security right in a tangible asset or intellectual property, which secures the obligation to pay any unpaid portion of the purchase price of the asset or other credit extended to enable the grantor to acquire it to the extent the credit is used for that purpose;

“Bureau” means the Uganda Registration Services Bureau, established by the Uganda Registration Services Bureau Act, Cap. 210;

“cash proceeds” means money, cheques, bank drafts on deposit accounts in financial institutions derived from lease, sale or other disposition of movable collateral;

“chattel” means movable property and includes negotiable instruments and money;

“collateral” means movable property that is subject to a security interest and includes movable property that may be subject to the security interest at a future date;

“commercial consignment” means a consignment where a consignor reserves an interest in the tangible assets that the consignor delivers to the consignee for the purpose of sale, lease or other disposition and both the consignor and consignee in the ordinary course of business, deal in those assets;

“commingled goods” means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass;

“competing claimant” means a creditor of a grantor or other person with rights in the collateral that may be in competition with the rights of the secured creditor in the same collateral, including—

- (a) another secured creditor of the grantor that has a security interest in the same collateral;
- (b) another creditor of the grantor that has a right in the same collateral;
- (c) a representative of the grantor in insolvency proceedings; or
- (d) a buyer or other transferee, lessee or licensee of collateral;

“currency point” has the value assigned to it in the First Schedule;

“debtor” means a person that owes payment or other performance of a secured obligation, whether or not that person is the grantor of the security interest securing payment or performance of the obligation;

“default” means the occurrence of an event that constitutes breach under the terms of an agreement between the debtor and the secured creditor;

“deposit account” means a demand, time, savings, passbook, or similar account maintained with a financial institution licensed by the Bank of Uganda or under any law in Uganda

“document of title” means a document that authorizes the delivery of tangible asset and satisfies the requirements of negotiability, such as a bill of lading and a warehouse receipt;

“financial institution” means a bank, credit institution or microfinance deposit taking institution licensed under the Financial Institutions Act or any other law;

“financial lease” means a lease of a tangible asset where—

- (a) the lessee automatically becomes the owner of the tangible asset;
- (b) the lessee may become the owner of the tangible asset by payment of a nominal price at the end of the lease; or
- (c) the tangible asset has not more than a nominal residual value;

“fixture” means a tangible asset that is physically attached or is intended to become physically attached to immovable property without losing its separate identity;

“grantor” means—

- (a) a person that creates a security interest to secure either its own obligation or that of another person;
- (b) a buyer that acquires goods whose title is to be retained by the seller;
- (c) a grantor of any charge, chattel mortgage, pledge or similar interest in movable property;
- (d) a lessee under a financial lease;
- (e) consignee who receives goods from another person under a commercial consignment; or
- (f) a seller of accounts receivable and a lessee under an operating lease, even though the receivable or the object of the lease does not secure an obligation;

“intangible asset” means accounts receivable, deposit accounts, electronic securities and intellectual property;

“intellectual property” includes rights relating to—

- (a) literary, artistic and scientific works;
- (b) performances of performing artists, phonograms and broadcasts;
- (c) inventions in all fields of human endeavor;
- (d) scientific discoveries;
- (e) industrial designs;
- (f) trademarks, service marks and commercial names and designations;
- (g) protection against unfair competition; and
- (h) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

“inventory” means tangible assets that are—

- (a) held for sale or lease in the ordinary course of business; and
- (b) raw materials, work in progress and materials used in a business;

“lien” means a right in property which is created by operation of law, by an order of court or other legal authority, or by the authority of an administrator in an insolvency proceeding but does not include a right of retention;

“Minister” means the Minister responsible for justice;

“movable property” includes goods, tangible assets, intangible assets, investment securities, money, negotiable instruments and documents of title;

“negotiable instrument” means a bill of exchange, cheque or promissory note, that satisfies the requirements for negotiability under the law governing negotiable instruments;

“person” includes any company or association or body of persons corporate or unincorporate;

“possession” means having physical custody of a tangible asset by a person;

“proceeds” includes whatever is acquired upon a sale, lease or other disposition of a collateral, such as money, property exchanged for the original collateral, property purchased with cash proceeds, a deposit account into which cash proceeds are deposited, and a right to insurance payment or other compensation for loss or damage of the collateral;

“registrar” includes the Registrar General, an assistant registrar or other officer performing the duty of registration of security interests in movable property under this Act;

“secured creditor” means a person in whose favor a security interest is created under a security interest agreement and includes—

- (a) a chargee under any type of charge or chattel mortgage and a holder of any type of consensual lien;
- (b) a seller who reserved title in the goods sold;
- (c) a financial lessor; and

- (d) a buyer of accounts receivable, a commercial consignor and an operating lessor under an operation lease but only for purposes of publicity and priority;

“secured obligation” means an obligation secured by a security interest;

“securities” include—

- (a) debentures, stock, or bonds issued or proposed to be issued by a government;
- (b) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate;
- (c) any right, warrant, option, or futures in respect of any debenture, stocks, shares, bonds, notes or in respect of commodities;
- (d) any instruments commonly known as securities;
- (e) bills of exchange;
- (f) promissory notes; or
- (g) certificates of deposit issued by a bank or financial institution;

“security interest” means a property right in movable property that is created by agreement to secure payment or other performance of an obligation, any type of charge over movable property, chattel mortgage and consensual lien, and includes —

- (a) a retention of title in movable property;
- (b) a right under a financial or operating lease;
- (c) a right of a transferee of accounts receivable; and

- (d) a right of the commercial consignee even if it does not secure payment or other performance of an obligation;

“tangible assets” has the meaning assigned to “chattel”;

“warehouse receipt” means a receipt for goods issued by a warehouse keeper duly licenced and bonded under this Act and includes a negotiable and non-negotiable warehouse receipt.

3. Scope of application.

(1) This Act applies to security rights in movable property where the movable property is—

- (a) a tangible asset located in Uganda;
- (b) an intangible asset, where the grantor of the asset is located in Uganda;
- (c) a tangible asset which is ordinarily used in two or more countries, where the grantor of the asset is located in Uganda.

(2) This Act also applies to security interests in movable property where —

- (a) the collateral is a deposit account maintained in a financial institution that has a place of business in Uganda;
- (b) the transaction involves a movable property that secures a payment or the performance of an obligation, without regard to the form or ownership of the movable property including a floating charge, a fixed charge, a pledge, a debenture, a warehouse receipt and any other transaction that secures payment or performance of an obligation with movable property;

- (c) the security interest is a lien in movable property created by judgment of court; and
- (d) the security interest is for the sale of accounts receivable, commercial consignments and for the lease of goods for more than one year.

(3) For the purposes of subsection (1) (a), (b) and (c), “location” shall be—

- (a) the location at the time of the creation of a security interest;
- (b) the location where perfection is achieved; and
- (c) the location where the priority of the claimants in the security interest of a collateral is determined, at the time the dispute arose.

(4) For the purposes of subsection (1) (b) and (c), a grantor is located in Uganda where the grantor has a place of business in Uganda and where the grantor does not have a place of business in Uganda, the habitual residence of the grantor be deemed to be the location of the grantor.

(5) Subsection (1) (f) and (g) shall only apply for the purposes of registration of notices and determination of the priority of the claimants.

(6) This Act does not apply to—

- (a) the creation, lease or transfer of an interest in immovable property;
- (b) a sale of accounts receivable as part of the sale of a business out of the accounts receivable arose;
- (c) the assignment of accounts receivable where the assignment is only for the purpose of collection action; and
- (d) the transfer of a claim for compensation of an employee.

(7) A claim that arises by operation of another law has priority over a security interest made effective against third parties under this Act.

PART II—CREATION OF SECURITY INTEREST

4. Creation of security interest.

(1) A security interest may be created—

- (a) in any type or combination of movable property;
- (b) in a part of or an undivided interest in movable property;
- (c) in a generic category of movable property; or
- (d) in all of the movable property of the grantor.

(2) A security interest is created by a written agreement entered into between a secured creditor and a grantor.

(3) An agreement for a security interest becomes enforceable where—

- (a) the grantor has a right in the collateral or has the power to encumber the collateral;
- (b) the agreement—
 - (i) is signed by the grantor;
 - (ii) identifies the secured creditor and the grantor;
 - (iii) describes the collateral in a manner that reasonably allows its identification, as may be prescribed by regulations made under this Act; and

- (iv) describes the secured obligation in a manner that reasonably allows for its identification, whether pre-existing, present or future, determined or determinable, conditional or unconditional, fixed or fluctuating or a line of credit, as may be prescribed by regulations made under this Act; and
- (v) indicates the maximum amount for which the security interest is enforceable; and

(c) the secured creditor gives the collateral a monetary value.

5. Continuation of security interest after transfer of collateral.

(1) Once created, a security interest continues in the collateral notwithstanding a sale, lease, license, exchange, or other disposition, of the collateral, except as otherwise provided in this Act or agreed upon by the grantor and the secured creditor.

(2) Unless otherwise agreed to by the parties, where a collateral that is the subject of an agreement for security interest is sold, the security interest in the collateral automatically extends to the proceeds of collateral, whether or not the agreement contains a description of the proceeds.

(3) Where the proceeds are credited to a deposit account, and are commingled with other funds, the proceeds shall be dealt with as may be prescribed by Regulations made under this Act.

6. Security interest in tangible assets continues in commingled goods.

A security interest created in a tangible asset which becomes a commingled good continues in the commingled good, except that the security interest is limited to the value of the collateral immediately before it becomes part of the commingled good.

7. Security interests, tangible assets and intellectual property.

The security interest in a tangible asset does not extend to the intellectual property of the tangible asset, and a security interest in the intellectual property of a tangible asset does not extend to the tangible asset.

PART III—PERFECTION OF SECURITY INTEREST.

8. Methods of perfecting security interests in collateral.

(1) A security interest in collateral created under Part II of this Act is perfected where—

- (a) a notice of the security interest in the collateral is entered in the register;
- (b) the secured creditor, or a person acting on behalf of the secured creditor has possession of the collateral; or
- (c) the collateral is a deposit account and the secured creditor or a person acting on behalf of the secured creditor has control of the deposit account.

(2) For purposes of subsection (1) (b), a secured creditor is not in possession of collateral that is in the actual or apparent possession or control of the grantor or an agent of the grantor.

(3) For the purposes of subsection (1) (c), control of a deposit account exists—

- (a) automatically upon the creation of the security interest, if the financial institution that maintains the deposit account is the secured creditor; and
- (b) upon the conclusion of an agreement for the control of a deposit account made by the financial institution, the grantor and the secured creditor.

(4) The method used to perfect a security interest under subsection (1) may be changed at any time and the security interest shall remain perfected notwithstanding a change in the means of perfection, provided that there is no time when the security interest is not perfected.

(5) Where the security interest effected under subsection (1) is in respect of a document of title, the security interest that extends to the tangible asset covered by the document of title shall also be perfected.

9. Methods of perfecting proceeds of security interests.

(1) Where a collateral to which section 8 applies is sold, the proceeds of the collateral shall be perfected without any further action.

(2) Subsection (1) shall apply where the proceeds are in the form of money, account receivables, negotiable instruments or right to payment of funds to a bank account.

(3) Where the proceeds are not of the type described in subsection (2), and are not described in the collateral description of the registered notice, the secured creditor shall perfect the security interest in the proceeds using any of the methods in section 8 (1), as may be prescribed by Regulations made under this Act.

10. Transfer of security interests.

(1) Where all or part of a security interest that is perfected by the registration of a notice under section 8 (1) (a), is transferred, the transferor shall register an amendment to the notice.

(2) Where a security interest that is not perfected by registration is transferred, the notice in which the transferee of the security interest is disclosed as the secured creditor of the security interest shall be registered under section 8 (1) (a).

(3) Registration under this section shall be as prescribed by Regulations made under this Act.

11. Security interest perfected outside Uganda.

Where a security interest in movable property is perfected against a third party under the law of a State other than Uganda, and the property is relocated or transferred to Uganda, this Act shall apply to the property and the security interest remains perfected against the claims of third party in accordance with this Act and Regulations to be made under this Act.

PART IV—REGISTRATION OF SECURITY INTERESTS IN MOVABLE PROPERTY.

12. Electronic Register of security interests in movable property.

(1) For the purposes of this Act, the Bureau shall maintain a register to be known as the “Register of Security Interests in movable property”.

(2) Security interests in movable property shall be registered electronically in the Register using notices which shall be registered sequentially, in the order in which they are submitted for registration.

(3) The Register shall reflect the date and time when the information is entered in the Register.

(4) A notice shall be effective from the date and time when the information in the notice is entered in the Register.

13. Registration of security interest.

(1) A security interest in a collateral shall be registered with the Bureau using an initial notice.

(2) A secured or judgement creditor may register an initial notice before the creation of a security interest under Part II of this Act.

(3) The grantor shall, in writing, authorise the registration of an initial notice prior to the registration of the initial notice.

25. Change in means of perfection not to affect priority.

The order of priority of a security interest is not affected by a change in the method of perfecting the security interest where security interest is not at any time unperfected.

26. Priority of security interest in future obligations and property acquired after registration.

(1) The priority of a security interest extends to all obligations secured by the security interest including the obligations that are incurred after the security interest is perfected.

(2) The priority of a security interest covers all the collateral described in the Register whether the collateral was acquired by the grantor or come into existence before or after the registration of the notice.

27. Priority of security interest in proceeds.

Where the security interest in the proceeds of a collateral is perfected, the priority of the security interest in the proceeds is determined using the date used to determine the priority of the security interest.

28. Priority of security interest in commingled goods.

(1) Where a tangible asset which becomes part of a product or mass, had two or more competing security interests and the security interests extend to the product or mass, the order of priority of the competing security interests in the product or mass is the same as the order of priority that the security interests had in the tangible asset immediately before the tangible asset become part of the product or mass.

(2) Where two or more security interests perfected in one tangible asset before it becomes part of a product or mass, the competing security interests rank in proportion to the value of the product or mass, at the time the tangible asset become part of the product or mass.

29. Priority of security interest in accessions.

A security interest in a tangible asset that is perfected before the asset becomes an accession, has priority over a claim to the tangible asset to which the accession is attached.

30. Priority of security interest in fixtures.

(1) A security interest taken in a tangible asset that becomes a fixture, may continue in the tangible asset after the tangible asset is affixed to the immovable property.

(2) A perfected security interest in a fixture under this Act has priority over a competing interest in immovable property created and perfected under the Land and Mortgage Act.

31. Priority of security interest in crops.

(1) A security interest in growing crops or in crops to be grown, which is perfected and the grantor is in legal possession of the land where the crops are, has priority over the interest of the owner of the land or the mortgagee of the land.

(2) A security interest in crops or in the proceeds of the crops, given for value to enable the grantor to produce or harvest the crops, and given while the crops are growing or within a period of six months, before the crops are planted, has priority over any other security interest in the same collateral given by the same grantor.

(3) The rights of a judgment creditor who causes land, where crops that have an unperfected security, to be seized in order to enforce a court judgment take priority over an unperfected security interest in the crops.

32. Rights of purchasers and other transferees.

(1) A purchaser, transferee, lessee, and licensee of collateral that is subject to a perfected security interest acquires rights in the collateral which is subject to the security interest, except where—

- (a) the purchaser, transferee, lessee, or licensee, as the case may be, acquires the rights free of the security interest and the secured creditor authorizes the sale or other transfer to be free of the security interest;
- (b) the lessee or licensee, as the case may be, acquires the rights free of a security interest and the secured creditor authorizes the lease or license to be free of the security interest;
- (c) a purchaser of the collateral, where the collateral is sold in the ordinary course of the business of the seller acquires the right free of the security interest, where at the time of the purchase, the buyer does not have knowledge that the sale violates the rights of the secured creditor under the security agreement;
- (d) the rights of a lessee or licensee of collateral where the collateral is leased or licensed in the ordinary course of the business of the lessor or licensee are not affected by the security interest, where at the time of the lease or license, the lessee or licensee does not have knowledge that the lease or license violates the rights of the secured creditor under the security agreement.

(2) Where collateral is subject to a security interest that is not perfected--

- (a) a court or a liquidator of an insolvent person that takes physical custody or control of the collateral takes the collateral free of an unperfected security interest;
- (b) a purchaser or lessee who acquires goods for value and receives possession of the goods takes the goods free of an unperfected security interest; and

- (c) a lien holder who takes control of collateral or causes collateral to be seized takes the collateral free of an unperfected security interest.

33. Acquisition security interest.

(1) A security interest in equipment, intellectual property, inventory or livestock, which secures all or part of the purchase price of the equipment, intellectual property, inventory or livestock and is taken by a person who provides credit to enable a grantor to acquire the equipment, intellectual property inventory or livestock, as the case may be, where the credit is used for that purpose, has priority over a competing non-acquisition security interest created by the grantor.

(2) The order of priority of competing security interest under this section shall be prescribed by Regulations made under this Act.

34 Security interest in negotiable instruments.

(1) A security interest in a negotiable instrument that is perfected by possession of the negotiable instrument has priority over a security interest in the negotiable instrument that is perfected by registration of a notice in the Register.

(2) A purchaser of a negotiable instrument has priority over the security interest of a secured creditor in the negotiable instrument where, in the ordinary course of the business of the purchaser—

- (a) the purchaser gives value;
- (b) the purchaser takes possession of the negotiable instrument; and
- (c) the purchaser does not have knowledge that the sale is in violation of the rights of the secured creditor under the security agreement.

PART VI - ENFORCEMENT OF SECURITY INTEREST.

35. Application of Part.

This Part applies to a security interest that is created or provided for under this Act.

36. Debtor and grantor not to waive rights before default.

A debtor, grantor or any other person that owes a payment or a performance with respect to a secured obligation shall not unilaterally waive or vary by agreement, any of the rights of a debtor, grantor or that other person under this Part before default.

37. Rights of secured creditor upon default.

(1) Where a debtor defaults on the obligation to pay or where another event of default occurs, the security interest becomes enforceable.

(2) Upon default, the secured creditor shall have—

- (a) the right to possession or control of the collateral, even if the security agreement is silent about possession or control; and
- (b) the right to sell or dispose of the collateral using any means, to satisfy the obligation.

38. Right of secured creditor with priority to enforce a security interest.

(1) Where the enforcement of a security interest is commenced by a lien holder or by a creditor other than the secured creditor, the secured creditor or lien holder whose right has priority over that of the enforcing creditor or enforcing lien holder is entitled to take over the enforcement at any time before the earlier of—

- (a) the sale or disposition by any other method of the collateral; or

- (b) the conclusion of an agreement by the secured creditor for the sale or disposition, by any other method, of the collateral.

(2) The right of a secured creditor or lien holder who has priority to take over the enforcement of a security interest includes the right to use any method of enforcement available under this Act or any other law.

39. Actions permissible without judicial process.

(1) Upon default, a secured creditor with a security interest in accounts receivable may instruct the account debtor to make payment to the secured creditor, and shall apply such payment to the satisfaction of the obligation secured by the security interest after deducting the collection expenses of the secured creditor.

(2) Upon default, a secured creditor with a security interest in a document of title that is perfected by possession may proceed in respect of the goods covered by the document of title.

(3) Upon default by an account debtor, where the security interest is in a deposit account—

- (a) where the deposit account is maintained by a financial institution and the security interest is perfected in the deposit account the financial institution may apply the balance of the deposit account to the obligation secured by the deposit account; and

- (b) where a secured creditor has a security interest in the deposit account perfected by a control agreement, the secured creditor may instruct the financial institution to pay the balance of the deposit account to the account of the secured creditor.

(4) The secured creditor may act under this section without an order of court.

(5) In this section--

“account debtor” means a person who is liable for payment on an account receivable, and includes a guarantor or other person with secondary liability for payment on the account receivable;

“control agreement” means an agreement between a financial institution, a grantor and a secured creditor, in which the financial institution agrees to follow the instructions of the secured creditor without the further consent of the debtor.

40. Expedited possession by secured party.

(1) In cases not covered by section 40, and subject to the rights of a person with priority in the possession of a collateral, including a lessee or licensee, the secured creditor is entitled to take possession of the collateral after default, with or without a court order.

(2) For the purposes of subsection (1), a secured creditor may take possession of a collateral without a court order where--

- (a) the grantor, in writing, consents to the secured creditor taking possession of the collateral without a court order;
- (b) the secured creditor gives a notice of default and a notice to take possession by the secured creditor, to the grantor or the person in possession of the collateral, where the collateral is not with the grantor; and
- (c) possession or control of the collateral can be taken without a breach of the peace.

(3) “Breach of the peace” in subsection (2) means--

- (a) entering the premises of the grantor without permission; or
- (b) being physically violent or intimidating the grantor.

(4) Where the collateral is a fixture, the secured creditor may remove the collateral from the immovable property to which it is fixed without court process where the owner and, if the immovable property is subject to a mortgage, the mortgagee, agree in writing.

41. Notice of disposition of collateral.

(1) A secured creditor shall, at least ten working days before the disposition of a collateral, give notice to—

- (a) the grantor and the debtor;
- (b) any other person who files a notice in respect of the collateral, within at least five days before the notice of disposition is given; and
- (c) any other person who gives the secured creditor notice of an interest in the collateral, where the notice is received before the secured creditor gives notice of the proposed disposition.

(2) A notice of disposition shall—

- (a) indicate the grantor and the secured creditor;
- (b) describe the collateral;
- (c) indicate the amount required to satisfy the secured obligation including the interest due and the expenses incurred;
- (d) state the method of the intended disposition; and
- (e) where the disposition is by a public sale, state the time and place of the public sale; and
- (f) where the disposition is by a private sale, state the time after which a private sale is to be made.

(3) Subsection (1) shall not apply where—

- (a) the collateral is perishable;
- (b) the secured creditor reasonably believes that the collateral shall decline substantially in value if it is not disposed of immediately;
- (c) the cost of the care and storage of the collateral is disproportionately large in relation to its value; or
- (d) the collateral is of a type customarily sold on a recognized market.

(4) The grantor may waive the right to be notified after default.

42. Notice and claim for distribution.

(1) A secured creditor shall at least ten working days before the distribution of the proceeds of sale or disposal, give notice of the proposed distribution to the persons specified in section 41 (1).

(2) The notice shall include—

- (a) the earliest date on which the distribution may occur;
- (b) the date on which persons who are given notice of the proposed distribution as required under subsection (1), may present claims on the proceeds of sale which are to be distributed;
- (c) the address to which the claims made under paragraph (b) are to be presented; and
- (d) the type of proof of the claim to be provided.

(3) The persons listed in section 41(1) shall within five working days from the receipt of the notice provide the secured creditor with—

- (a) an authenticated claim of the interest; or
- (b) a notice of claim of interest in the collateral from a lien holder.

(4) The notice need not be given if the collateral may perish before the end of ten working days after the secured creditor obtained its possession and may decline in value quickly.

43. Application of proceeds.

(1) A secured creditor who disposes of collateral shall apply the proceeds of the disposition in the following order—

- (a) payment for the expenses of taking possession, holding, storing, repairing, valuing, and preparing for and disposing of the collateral, including the legal expenses incurred by the secured creditor;
- (b) payment for the satisfaction of obligations secured by a security interest that has priority claim in the collateral or lien;
- (c) payment for the satisfaction of the obligation secured by the security interest of the enforcing secured creditor; and
- (d) payment for the satisfaction of the obligations secured by any subordinate security interest or lien in the collateral where written demand and proof of the interest are received before the distribution of the proceeds is completed.

(2) A secured creditor or lien holder who enforces the distribution of the proceeds of a disposition may after deduction of the payments specified in subsection (1), pay the surplus of the proceeds to a court for distribution to the other claimants.

(3) The secured creditor shall account to the grantor for the surplus of the proceeds, if any.

(4) A debtor is liable for any deficiency in the proceeds due.

44. Statement of account.

(1) A secured creditor shall, within ten working days after the disposal of the collateral, provide a written statement of account, to the persons entitled to notice.

(2) The statement of account shall indicate—

- (a) the amount of the gross proceeds of the disposal;
- (b) the amount of the costs and expenses of enforcement and disposition; and
- (c) the balance owing by the secured creditor to the debtor, or by the debtor to the secured creditor as the case may be.

45. Proposal and notice of acquisition of collateral by secured creditor.

(1) After default, the secured creditor may propose to acquire all or part of the collateral in total or partial satisfaction of the obligation of the debtor.

(2) The secured creditor shall give notice of the proposal to acquire the collateral, to the persons specified in section 42 (1).

(3) The proposal shall include—

- (a) the name of the secured creditor and the grantor;
- (b) a statement of the amount of money required to satisfy the secured obligation, at the time the proposal is given, including the interest, the cost of enforcement and the amount of the secured obligation that is proposed to be satisfied;

- (c) a statement that the secured creditor proposes to acquire the collateral described in the proposal in total or partial satisfaction of the secured obligation;
- (d) a statement that the grantor, any other person with a right in the collateral or the debtor is entitled to terminate the process by making payment; and
- (e) a statement of the date after which the secured creditor may acquire the collateral.

46. Objection to notice of acquisition.

(1) A person who receives a notice as required under section 45 (2) and whose interest in the collateral would be adversely affected by the acquisition of the collateral by the secured creditor shall, within ten working days after receipt of the notification, serve a written notice of objection to the secured creditor.

(2) The secured creditor shall, upon receipt of the notice of objection in subsection (1), dispose of the collateral in accordance with the provisions of this Act.

(3) Where a secured creditor refuses to dispose of the collateral after receiving a notice of objection, a person entitled to receive a notice of acquisition may petition court requesting that the collateral be disposed of.

(4) Where a secured creditor does not receive any notice of objection within the period specified, the secured creditor may acquire the collateral in full or partial satisfaction of the obligation of the debtor, in accordance with the proposal.

(5) Upon acquisition of a collateral by a secured creditor, any other security interests and claims in the collateral terminate.

47. Redeeming collateral.

(1) The grantor, a person with a right in the collateral, or the debtor, is entitled to terminate the enforcement process and redeem the collateral by—

- (a) tendering performance of the obligations secured by the collateral; or
- (b) paying the expenses that were incurred to seize, hold, repair and prepare the collateral for disposition.

(2) A collateral may be redeemed where—

- (a) the grantor, a person with a right in the collateral, or the debtor, as the case may be, has not, after the default, waived the right to redeem;
- (b) the secured creditor has not yet sold or disposed of, or contracted for sale or disposal of the collateral; or
- (c) the secured creditor has not irrevocably elected to acquire the collateral.

(3) A grantor has the priority to redeem the collateral, over any other person.

(4) Where the secured creditor leased or licensed the collateral to a third person, the collateral may be redeemed, subject to the rights of the lessee or licensee.

48. Rights acquired in collateral.

(1) Where a secured creditor sells or otherwise disposes of the collateral in accordance with the provisions of this Part, the buyer or transferee of the collateral acquires the rights of the grantor in the collateral free of the rights of the enforcing secured creditor and any competing claimant, except the rights that have priority over the security interest of the enforcing secured creditor.

(2) Where a secured creditor leases or licenses the collateral, the lessee or licensee is entitled to the benefit of the lease or license during its term, except as against a creditor with priority over the enforcing secured creditor.

49. Noncompliance with Part by secured creditor.

Where a secured creditor does not comply with the requirements of this Part, the grantor, a person with a right in the collateral or the debtor, may apply to court for relief and recovery from the secured creditor of damages, for any loss caused by the failure to comply with this Part.

PART VII—GENERAL

50. Administrative penalties.

(1) The Registrar General may, impose an administrative penalty on a person that does not comply with this Act as may be prescribed by Regulations.

(2) Where a person fails to pay an administrative penalty imposed under subsection (1), the Registrar General may, by way of civil action in a competent court, recover the amount of the administrative penalty from such person as an amount due and owing to the Bureau.

51. Offences

(1) A person who files a notice with fraudulent, frivolous or malicious intent commits an offense and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding two hundred currency points or both.

(2) A person who for the purpose of deceiving the Registrar General or an officer of the Bureau in the execution of this Act, makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, commits an offense and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding two hundred currency points or both.

(3) A person who, makes a false statement or a misrepresentation, whether orally or in writing, for the purpose of procuring or influencing the doing or omitting the doing of anything

in relation to this Act and who, on becoming aware of the false statement or misrepresentation, fails to inform the Registrar General commits an offense and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding two hundred currency points or both.

52. Regulations.

(1) The Minister may, by statutory instrument, make regulations for, or with respect to any matter under this Act that is necessary for giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), regulations made under this section may --

- (a) provide for the procedure for registration of notices, liens and any other matters related to the register;
- (b) provide for the format of notices;
- (c) provide for the procedure and requirements for conducting a search of the register;
- (d) prescribe the fees to be paid under this Act;
- (e) prescribe the administrative penalties payable under this Act; and
- (f) prescribe anything required to be prescribed under this Act.

53. Repeal and savings.

(1) The Chattels Securities Act, 2014, Act No. 7 of 2014 is repealed.

(2) Notwithstanding the repeal under subsection (1), an instrument registered under the Chattels Securities Act, shall continue to be valid for a period not exceeding ninety days from the commencement of this Act, after which it shall be rendered void unless executed and registered in accordance with this Act.