

**BILLS SUPPLEMENT**

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**Bill No. 12**

*Chattels Securities Bill*

**2009**

**THE CHATTELS SECURITIES BILL, 2009**

**MEMORANDUM.**

1. The object of this Bill is to regulate the making and enforcement of security interests in chattels, to repeal the Chattels Transfer Act Cap. 70 and for other related purposes.
2. Chattels security deals with the giving of personal property or chattels other than land as security for a loan or debt.
3. Secured transactions generally deal with guaranteeing and giving security either for a debt, credit or property. The essence of the security in relation to chattels security is to secure the performance of an obligation, usually repayment of a debt arising from leased property. The overall purpose of the security is to improve the chances of getting repayment.
4. Chattels as collateral for repayment of a debt are not well developed in Uganda. They are mostly used by individual lenders rather than banks. Banks usually accept only land as security. The current law has not therefore been put into much use.
5. The law relating to chattels securities in Uganda is the Chattels Transfer Act, Cap. 70, common law and the doctrines of equity by virtue of the Judicature Act, Cap. 13. The Chattels Transfer Act has been on the Statute Book since 1978, and is largely based on the old English law and has rarely been put to use due to its archaic and complicated provisions. The common law principles and doctrines of equity derived from England are not easily accessible and some of them have been modified since the date of inception.

6. Whereas there have been few amendments in the law over the years to keep up to date with changes taking place in society, there has never been a major attempt to reform the law on secured transactions, except for the Mortgage Act, Cap. 229 which amended the law relating to mortgages in 1974. The Chattels Transfer Act has never been amended.
7. The Bill therefore is intended to overhaul the legal situation and to provide adequately a chattels securities law commensurate with Uganda's state of development and social circumstances and to promote private investment.
8. The Bill consists of ten Parts and two Schedules. Part I of the Bill deals with preliminary matters including commencement, interpretation.
9. According to the Bill, for a transaction to create a security interest, it must fulfil the following criteria—
  - (a) it must be intended only as security;
  - (b) it must be a right that is enforceable against any person;
  - (c) it must be created by grant or declaration of trust and not by reservation;
  - (d) it must be fixed or specific, that is, it must imply a restriction on the debtor's domination over the asset; and
  - (e) it must not be taken by the creditor over his or her own obligation to the debtor (i.e. security given by a debtor to a creditor should be for the sole purpose of creating a security interest and not transfer the property of the debtor to the creditor).
10. At present, although the Chattels Transfer Act does not provide for perfection of a security interest which is a major omission, the Chattels Securities Bill provides for perfection of a security interest by registration in clause 18.

11. Part II of the Bill deals with creation of security interests and rights of a secured party. Clause 10(1) of the Bill provides that an agreement to create a security interest is effective according to its terms between the parties to it, and is enforceable against a third party. Clause 10(2) imposes a duty of good faith to apply to both debtor and the secured party.
12. Part III of the Bill deals with perfection and priority of security interests. Clause 17 provides that a security interest is perfected when it has attached and all steps required for perfection under the Act have been complied with.
13. Part IV of the Bill deals with registration. Clause 35 of the Bill provides for the Minister to designate a public officer as a registrar of chattel securities for the whole of Uganda and an assistant registrar for areas determined by the Minister. Clause 37 of the Bill requires the registrar to establish and maintain a register of chattels security interests in personal property to be known as the register of securities. Clause 38 of the Bill spells out detailed requirements for a register of chattels book. For instance, the clause requires every instrument to be registered and marked with the date of registration and the number, and to enter in the register the particulars of the instrument as registered in the prescribed form in the register. The clause further requires the registrar to keep an index of the names of grantors and grantees of instruments and to refer to the entries in the register book of the instruments given by each grantor.
14. Part V of the Bill deals with instruments. Clause 45 of the Bill requires every instrument to be attested by at least one witness and clause 46 provides that an instrument not duly attested or registered shall be void except as against the grantor in respect of the chattels comprised in the instrument.
15. Part VI of the Bill deals with financing statements. Clause 60 provides that a financing statement may relate to one or more agreements creating a security interest. Clause 61 requires a financing statement to be registered.

16. Part VII of the Bill spells out rights and remedies. Clause 65 provides for the right to compensation. Remedies range from realisation of collateral by appointment of a receiver, taking possession and sale by a secured party as well as instituting a legal suit against the debtor on the claims. See clauses 73, 74, 75 and 76. Clause 81 provides for the debtor's right to redeem the collateral before it is sold by the secured party.
17. Part VIII deals with sale of chattels. Clause 86 provides that a chattel or any part of the chattel may be sold along with the land to recover payment of money secured in the instrument. Clause 87 provides the mode of sale. Under clause 89, the grantor's interest in chattels may be sold in execution of a judgment against him or her.
18. Part IX provides for covenants implied in instruments, these covenants may be enforced severally or jointly against the parties to the instrument. The covenants bind the parties to the instrument, their executors, administrators and assignees. The covenants may be expressly varied by the parties. See clauses 91, 92, 93 and 94.
19. Part X deals with miscellaneous matters relating to chattel securities. Clause 95 deals with defrauding or attempting to defraud the grantee. This constitutes an act contrary to honest commercial practice and amounts to breach of the relationship. Clause 96 provides for entitlement to damages for breach of obligations.

Clause 97 empowers the Minister to make regulations for giving better effect to the Act.

Clause 99 deals with repeal and savings. Clause 99(1) seeks to repeal the Chattels Transfer Act, Cap. 70. Clause 99(2) of the Bill seeks to save instruments registered under the repealed Act and provides that they shall continue to be valid for a period not exceeding ninety days from the commencement of the Act, after which the instruments shall be rendered null and void unless executed and registered in accordance with the provisions of the Act.

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THE CHATTELS SECURITIES BILL, 2009

ARRANGEMENT OF CLAUSES

*Clause*

PART I—PRELIMINARY

1. Commencement
2. Interpretation
3. Agreement giving power of distress by way of security to be instrument
4. Reservation of title
5. Collateral in possession or control of debtor
6. Knowledge of fact in relation to particular transaction
7. Notice to be in writing
8. Conflict of laws

PART II—CREATION OF SECURITY INTEREST AND  
RIGHTS OF SECURED PARTY

9. Creation of security interest
10. Effectiveness of agreement creating security interest and duty of good faith
11. Attachment of security interest
12. Attachment of security interest in property after it is acquired
13. Future advances
14. Rights and duties where collateral is in possession of secured party
15. Secured party to supply information
16. Requirements for enforcement against third parties

PART III—PERFECTION AND PRIORITY OF SECURITY INTEREST

17. Perfection of security interest
18. Perfection by registration
19. Perfection by possession of collateral
20. Temporary perfection where collateral is delivered or is available to debtor
21. Security interest in proceeds
22. Continuity of perfection

*Clause*

23. Protection of purchasers of goods
24. Protection of purchasers of chattel paper, negotiable instruments, documents of title and securities
25. Priorities among conflicting security interests in same collateral
26. Priority of purchase money security interests
27. Priority where registration ceases to be effective
28. Priority of negotiable document of title
29. Priority of lien
30. Priority of security interests in fixtures
31. Priority of security interests in crops
32. Priority of security interests in accessions
33. Priority where goods are processed or mixed
34. Priority subject to postponement

## PART IV—REGISTRATION

35. Designation of registrar
36. Registrar's official seal
37. Register of chattels securities
38. Register book and index to be kept
39. Mode of registration
40. Time for registration
41. Duration and renewal or change of registration
42. Register searches
43. Certified copies
44. Fees

## PART V—INSTRUMENTS

45. Attestation of instrument
46. Instrument not duly attested and registered to be void
47. Chattel comprised in registered instrument not to be in possession of grantor
48. Priority of two or more instruments registered for the same chattel
49. Form of instrument
50. Instrument to take effect upon registration
51. Instrument to have inventory of chattels

*Clause*

52. Instrument not to affect chattels acquired after execution of instrument
53. Instrument made subject to condition or declaration of trust
54. Instrument securing current account
55. Instruments comprising stock
56. Instrument comprising crops
57. Substitution of chattels described in instrument
58. Transfer of instrument
59. Registration of transfer of instrument

**PART VI—FINANCING STATEMENT**

60. Financing statement
61. Registration of financing statement
62. Financing change statement for transferred security interest
63. Collateral in registered financing statement
64. Transfer of debtor's interest in collateral or change of debtor's name

**PART VII—RIGHTS AND REMEDIES**

65. Right to compensation
66. Matters in respect of which compensation is payable
67. Maximum compensation payable
68. Factors that may prevent or reduce compensation payments
69. Exemption from liability
70. State's right of subrogation
71. Remedies available where debtor in default
72. Real and personal collateral
73. Realisation of collateral
74. Appointment of receiver
75. Possession by secured party
76. Sale by secured party
77. Treatment of deficiency after sale
78. Mode of sale
79. Notice of sale
80. Effect of sale
81. Debtor's right to redeem
82. Foreclosure

Clause

- 83. Duties of secured party
- 84. Secured party's liability for failure to comply
- 85. Rights of landlord or mortgagee

PART VIII—SALE OF CHATTELS

- 86. Sale of chattel
- 87. Mode of sale
- 88. Vesting interest in chattels
- 89. Grantor's interest in chattels may be sold in execution of judgment against grantor
- 90. Inter-pleader process not affected by the Act

PART IX—COVENANTS IMPLIED IN INSTRUMENTS

- 91. Covenants implied in instruments
- 92. Covenants to be several or joint
- 93. Covenants to bind executors, administrators
- 94. Covenants may be varied

PART X—MISCELLANEOUS

- 95. Defrauding or attempting to defraud grantee
- 96. Entitlement to damages for breach of obligations
- 97. Regulations
- 98. Minister's power to amend Schedules
- 99. Repeal and savings

SCHEDULES

First Schedule—Currency Point

Second Schedule—Covenants implied in instruments



A BILL for an Act

ENTITLED

**THE CHATTELS SECURITIES ACT, 2009.**

**An Act to regulate the making and enforcement of security interests in chattels; to repeal the Chattels Transfer Act, Cap. 70 and for other related purposes.**

BE IT ENACTED by Parliament as follows:

**PART I—PRELIMINARY**

**1. Commencement.**

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

**2. Interpretation.**

In this Act, unless the context otherwise requires—

“accessions” means goods that are installed in or fixed to other goods;

“cash proceeds” means proceeds in the form of money, cheques, drafts, and deposit accounts in a deposit-taking institution;

“chattel” means 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—

- (a) title deeds, choses in action or negotiable instruments;
- (b) shares and interests in the stock, funds or securities of any government or local authority;
- (c) shares and interests in the capital or property of any company or other corporate body; or
- (d) debentures and interest coupons issued by any government, or local authority, company or other corporate body;

“chattel paper” means one or more documents that evidence—

- (a) a monetary obligation and a security interest in a lease of specific goods; or
- (b) a lease of specific goods;

“chose in action” means a right which can be enforced in court;

“collateral” means personal property that is subject to a security interest;

“consumer goods” means goods that a debtor uses or acquires for use primarily for personal, family or household purposes; and the determination whether goods are consumer goods for the purposes of a security interest is made at the time the security interest in the goods attaches;

“court” means a court of competent jurisdiction;

“crops” means crops, whether matured or otherwise, and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land, but does not include trees;

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

“debtor” means—

- (a) a person who owes payment or performance of a secured obligation, whether or not that person owns or has rights in the collateral;
- (b) a seller of receivables;
- (c) a lessee under a lease for a term of more than three years; or
- (d) where the debtor and the owner of the collateral are not the same person—
  - (i) in any provision dealing with the collateral, the owner of the collateral;
  - (ii) in any provision dealing with the obligation, the person under the obligation; and
  - (iii) both the debtor and the owner, where the context permits or requires;

“document of title” means a document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the goods it covers; and includes a bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods; and is issued by or addressed to a bailee and relates to goods in the possession of the bailee that are identified or are tangible portions of an identified mass;

“executed” means signed by the grantor or his or her attorney;

“financing change statement” means a document relating to a registered financing statement;

“financing statement” means a document relating to a security interest or proposed security interest registered under this Act and includes a financing change statement and a security document registered under any other Act before the coming into force of this Act;

“fungible” means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit, and includes unlike units to the extent that they are treated as equivalents under a security agreement;

“future advance” means the payment of money, provision of credit, or giving of value secured by a security interest, occurring after the agreement creating the security interest has been entered into, whether or not given pursuant to a commitment, and includes advances and expenditures made for the protection, maintenance, preservation or repair of a collateral;

“goods” means tangible personal property other than—

- (a) chattel paper;
- (b) documents of title;
- (c) tangibles;
- (d) money;
- (e) negotiable instruments;
- (f) receivables; or
- (g) securities,

and includes crops and animals, but does not include trees until they are severed or minerals until they are extracted;

“grantee” means a party to an instrument to whom a chattel or an interest referred to in the instrument is granted or assigned, or a party to whom a chattel or an interest referred to in the instrument is agreed to be granted or assigned, and includes his or her executors, administrators and assignees, and in the case of a company or corporation, includes the successors and assignees of the company or corporation;

“instrument” means an instrument given to secure the payment of money or the performance of an obligation and includes a bill of sale, mortgage, lien, or a document that transfers the property or interest in a chattel, whether permanently or temporarily by way of sale, security, pledge, settlement or lease, and includes—

- (a) inventories of chattels with receipts attached to the inventories;
- (b) receipts for purchase money of chattels;
- (c) declaration of trust without transfer;
- (d) powers of attorney, authorities, or licences to take possession of chattels as security for debt; and
- (e) an agreement whether or not it is intended to be followed by the execution of an instrument in which a right in equity to a chattel, or to a charge or security is conferred,

but does not include—

- (i) securities over, or leases of, fixtures, except trade machinery when mortgaged or charged apart from the land to which they are attached, when mortgaged, charged or leased in land or a building to which they are affixed, and whether or not the fixtures are specifically included in the mortgage, charge or lease;
- (ii) assignments for the benefit of the creditors of the person making the assignment;
- (iii) transfer or agreements to transfer instruments by way of security;
- (iv) transfer or assignment of a ship or vessel;
- (v) transfer of a chattel used in the ordinary course of business or trade;

- (vi) debentures issued by Government or a local authority;
- (vii) a bill of sale of a chattel in a foreign country or at sea;
- (viii) a document used in the ordinary course of business as proof of the possession or control of chattels, or a document authorising the transfer or receipt of the chattels mentioned in the document;
- (ix) a debenture issued by a company or corporate body and secured upon the capital stock or chattels of the company or corporate body;
- (x) a mortgage or charge granted or created by a company incorporated or registered under the Companies Act; or
- (xi) a hire-purchase agreement;

“lease” means a lease or bailment of goods for more than three years and includes—

- (a) a lease of an indefinite term, even though the lease is determinable by one or both of the parties not later than three years from the date of its execution;
- (b) a lease for a term of three years or less that is automatically renewable or that is renewable at the option of one of the parties or by agreement for one or more terms, the total of which may exceed three years; and
- (c) a lease for a term of three years or less where the lessee retains uninterrupted or substantially uninterrupted possession of the goods leased for a period in excess of one year after the day the lessee first acquired possession of the goods, but where the lease does not become a lease for a term of more than three years until the lessee’s possession extends for more than three years,

but does not include—

- (i) a lease by a lessor who is not regularly engaged in the business of leasing; or
- (ii) a lease of household furnishings or appliances;

“liquidator” has the meaning in the Insolvency Act;

“machinery” means the machinery used in a factory or workshop, or in the production, preparation or manufacture of agricultural products, but does not include—

- (a) waterwheels, engines and steam boilers;
- (b) fixed power machinery, such as the staffs, wheels, drums and appliances used in the transmission of power; or
- (c) pipes for steam, gas and water;

“Minister” means the Minister responsible for trade;

“negotiable instrument” means a bill of exchange, note or cheque within the meaning of the Bills of Exchange Act and includes—

- (a) any document that evidences a right to payment of money and which is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment; and
- (b) a letter of credit, if the letter of credit states on it that it shall be presented on claiming payment,

but does not include chattel paper, a document of title or a security;

“prior security interest” means a security interest provided for by an agreement that—

- (a) was made or entered into before the coming into force of this Act; and
- (b) has not been terminated before the coming into force of this Act;

but does not include a security interest which is renewed, extended or consolidated by an agreement or transaction made or entered into after the coming into force of this Act;

“proceeds” means identifiable or traceable personal property in any form derived directly or indirectly from dealing with a collateral or proceeds of a collateral, and includes—

- (a) a right to an insurance payment or any other payment as indemnity or compensation for loss or damage to the collateral or proceeds; and
- (b) a payment made in total or partial discharge or redemption of an intangible, a negotiable instrument, a security or chattel paper;

“public trustee” means the public trustee appointed under the Public Trustee Act;

“purchase money security interest” means a security interest to the extent that it is—

- (a) taken or retained by the seller of collateral to secure all or part of its price;
- (b) taken by a person who, by making advances or incurring an obligation, gives value to enable a debtor acquire rights in or the use of collateral if the value is in fact used; or
- (c) the interest of a lessor of goods under a lease for a term of three years,



but does not include a transaction of sale by and lease back to the seller, and for the purposes of this definition “price” and “value” include credit charges or interest payable for the purchase or loan credit;

“reccivables” means any right to payment for goods sold or leased or for services rendered which is not evidenced by chattel paper, or by a negotiable instrument or by a security, whether or not it has been earned by performance;

“register” means the register of chattels securities interests established under section 37;

“registrar” means the registrar of chattels securities designated by the Minister under section 35 and includes an assistant registrar;

“secured party” means a person who holds a security interest for his or her own benefit or for the benefit of another person and includes a trustee where the holders of the obligations issued, guaranteed or provided for are represented by a trustee as the holder of the security interest;

“security” means an instrument given to secure the payment of money or the performance of some obligation and includes share, stock, warrant, bond, debenture or any document—

- (a) that is in a form recognised in the place in which it is issued or dealt with as evidence of a share, participation or other interest in property or an enterprise; or
- (b) that is evidence of an obligation of the issuer and which in the ordinary course of business is transferred by—
  - (i) delivery, together with any necessary endorsement, assignment or registration in the records of the issuer or agent of the issuer; or

- (ii) compliance with any conditions restricting transfer; and an uncertificated security;

“security document” means a writing which creates a security interest, or which evidences a security interest;

“security interest” means a right that is enforceable against persons generally, arising out of an interest in a chattel paper, a document of title, goods, an intangible, money, or a negotiable instrument and includes—

- (a) a fixed charge;
- (b) a floating charge;
- (c) an interest created or provided for by—
  - (i) a chattel mortgage;
  - (ii) a conditional sale agreement including an agreement to sell subject to retention of title;
  - (iii) a hire purchase agreement;
  - (iv) a pledge;
  - (v) a security trust deed;
  - (vi) a trust receipt;
  - (vii) an assignment;
  - (viii) a consignment;
  - (ix) a lease; or
  - (x) a transfer of chattel paper,

which secures payment or performance of an obligation; without regard to the form of the transaction and without regard to the identity of the person who has title to the collateral, including where title to the collateral is in the secured party;

“stock” includes sheep, goats, cattle, horses, pigs, poultry, and any other domestic animals;

“tangibles” means personal property other than—

- (a) chattel paper;
- (b) documents of title;
- (c) goods;
- (d) money;
- (e) negotiable instruments;
- (f) receivables; or
- (g) securities;

“uncertificated security” means a security which is not evidenced by a security certificate, and the issue and transfer of which is registered by or on behalf of the issuer.

### **3. Agreement giving power of distress by way of security to be instrument.**

(1) An agreement, not being a mining lease, in which a power of distress is given or agreed to be given by way of security, for present, future or contingent debt or advance, and in which any rent is reserved or paid as a means of providing for the payment of interest on the debt or advance, or for the purpose of security only, shall be an instrument covering chattels seized or taken under the power of distress.

(2) Notwithstanding subsection (1), where a mortgagee of an interest in land enters into possession of the mortgaged land, receives rent or profits in respect of the land, or transfers the land or any part of the land to the mortgagor at a fair and reasonable rent, the instrument in which the transfer is effected shall not be taken to be an instrument within the meaning of this Act.

### **4. Reservation of title.**

A reservation of title by a secured party or a seller of goods, notwithstanding shipment or delivery, is limited in effect to the reservation of a security interest.

**5. Collateral in possession or control of debtor.**

A secured party does not have possession of collateral that is in the actual or apparent possession or control of a debtor or of an agent of a debtor.

**6. Knowledge of fact in relation to particular transaction.**

(1) For the purposes of this Act—

- (a) a person knows or has knowledge of a fact in relation to a particular transaction where that person—
  - (i) has actual knowledge of the fact; or
  - (ii) receives a notice stating the fact;
- (b) an organisation knows or has knowledge of a fact in relation to a particular transaction where—
  - (i) a person within the organisation who is conducting the transaction has actual knowledge of the fact;
  - (ii) the organisation receives a notice stating the fact; or
  - (iii) the fact is communicated to the organisation in a manner that it would have been brought to the attention of the person conducting the transaction if the organisation had exercised reasonable care;
- (c) a person receives a notice, demand or document required to be given or made under this Act where—
  - (i) it is delivered to that person or to the place of business through which the security agreement was made or to a place held out by that person as the place for the receipt of the communication ;or
  - (ii) it is delivered to an address at which it may be left or to which it may be given under section 7;
- (d) a demand, notice or document is made or given to a person—

- (i) by taking the steps reasonably required to inform the person; or
- (ii) by delivering, leaving or posting the demand, notice or document, in accordance with section 7,

whether or not the person acquires actual knowledge of the demand, notice or document.

(2) For the purposes of subsection (1) (b)—

- (a) “organisation” includes, a body corporate, local government, estate, trust, partnership or other association of two or more persons having a joint or common interest, or any other legal or commercial entity; and
- (b) an organisation exercises reasonable care if it takes the steps reasonably required to ensure that significant information is brought to the attention of the person within the organisation conducting a particular transaction; but nothing in this paragraph requires a person acting on behalf of the organisation to communicate information unless the communication is part of the regular duties of that person, or unless the person has reason to know of the transaction and that the transaction would be materially affected by the information.

## 7. Notice to be in writing.

(1) A demand, notice or document made under this Act shall be in writing, and shall, in the case of a request made under section 16, contain a postal address.

(2) A demand, notice or document is deemed to be sufficiently made or given where—

- (a) in the case of a secured party named in a financing statement, it is delivered to that person or is left at the address of that person, as specified in the financing statement or is posted in a letter addressed to that person by name, at that address; or

(b) in the case of any other person, it is delivered to that person or is left at the usual or last known place of residence or business of that person or at an address specified for that purpose in the security document, or if it is posted in a letter addressed to that person by name, at the place of residence or business of that person.

(3) Where the person is absent from Uganda, the notice, demand or other document may be given to an agent of the person in Uganda; and where the person is deceased, it may be given to the personal representative of the deceased person.

(4) Where the person is absent from Uganda and has no known agent in Uganda, or is deceased and has no personal representative, or the identity or whereabouts of the person is not known, the demand, notice or other document may be made or given in a manner directed by court.

(5) Notwithstanding subsections (1), (2),(3) and (4), court may in any case, make an order directing the manner in which a demand, notice or document is to be made or given, or dispensing with the making or giving of a demand, notice or other document.

(6) Subsections (1), (2), (3),(4) and (5) do not apply to notices or other documents given or served during court proceedings.

(7) Subsections (1), (2), (3),(4) and (5) do not apply to the giving of any notice where another procedure is specified in the agreement creating the security interest for the giving of notices; and a notice given in accordance with that procedure is sufficiently given for the purposes of this Act.

(8) Section 61(6) concerning the effect of a defect, irregularity, omission or error in a financing statement or in the execution or registration of it, applies with any necessary modifications, to a defect, irregularity, omission or error in a notice, demand or other document required or authorised to be given or made to any person by this Act.

**8. Conflict of laws.**

(1) The validity, perfection and effect of perfection or non-perfection of a security interest is governed by the law of Uganda where—

- (a) at the time the security interest attaches—
  - (i) the collateral is situated in Uganda;
  - (ii) the collateral is situated out of Uganda but the secured party has knowledge that it is intended to be moved to Uganda; or
- (b) the security agreement provides that the law of Uganda will be applied.

(2) Where a security interest to which the law of Uganda does not apply under subsection (1) has attached to collateral before the collateral is moved to Uganda, the security interest is taken to be perfected by registration under section 18, if the secured party has complied with the requirements for enforceability of the security interest against third parties, in the jurisdiction where the security interest attaches.

PART II—CREATION OF SECURITY INTEREST AND  
RIGHTS OF SECURED PARTY.

**9. Creation of security interest.**

(1) A security interest is created by a transaction that in substance secures payment or performance of an obligation, without regard to the form of the transaction, identity of the person who has title to the collateral, or whether title to the collateral is in the secured party.

(2) A security interest may be created by—

- (a) a transfer of receivables; or
- (b) a lease for a term of more than three years,

even where the transfer or lease does not secure payment or performance of an obligation.

- (3) For a transaction to create a security interest, it shall—
- (a) be intended only as security;
  - (b) be a right that is enforceable against any person;
  - (c) be created by grant or declaration of trust and not by reservation; and
  - (d) expressly specify a restriction on the control by the debtor over the assets.
- (4) A security interest does not include—
- (a) a lien, charge or interest created by another Act; or
  - (b) an interest created or provided for by—
    - (i) a transfer of an interest or claim in or under a contract of annuity or policy of insurance, except as provided by this Act with respect to proceeds and priorities in proceeds;
    - (ii) a transfer of an unearned right to payment under a contract to a person who is to perform the obligations of the transferor under the contract;
    - (iii) the creation or transfer of an interest in land;
    - (iv) an assignment of receivables made solely to facilitate the collection of the receivables on behalf of the person making the assignment;
    - (v) an assignment for the benefit of a creditor of a person making the assignment;
    - (vi) a transfer of present or future wages, salary, pay, commission or compensation for labour or personal services;
    - (vii) a transfer of a right to damages in tort;



(viii) a transfer of a right to payment that arises in connection with an interest in land, including a transfer of rental payments payable under a lease or a licence to occupy land, unless the right to payment is evidenced by a security; or

(ix) sale of receivables as part of a sale of a business out of which they arose, unless the vendor remains in apparent control of the business after the sale,

whether or not the interest would otherwise be a security interest.

(5) A security interest shall be taken as given by a debtor to a creditor for the sole purpose of creating a security interest and shall not operate as a transfer of an interest in property from the debtor to the creditor.

(6) Where a debtor signs a transfer as a condition for a grant of a security interest under this Act, the transfer shall be void.

#### **10. Effectiveness of agreement creating security interest and duty of good faith.**

(1) Notwithstanding the provisions of this Act, an agreement to create a security interest is effective according to its terms, between the parties to it and is enforceable against a third party.

(2) A duty of good faith applies to both the debtor and the secured party.

#### **11. Attachment of security interest**

(1) A security interest in the nature of a floating charge, attaches to collateral when it becomes enforceable against a debtor.

(2) A security interest in the nature of a floating charge does not attach unless—

- (a) the parties agree to create the security interest;
- (b) value is given by the secured party; and
- (c) the debtor has rights in the collateral,

except where the parties agree that it shall attach at a later time, in which case it attaches in accordance with the agreement of the parties.

(3) Where a person possessing property claims a security interest in the property in the absence of a security document, the burden of proving the existence of an agreement to create a security interest lies with the person claiming the security interest.

(4) For the purposes of subsection (1), an agreement to create a floating charge is not an agreement that the security interest created by the floating charge attaches at a later time.

(5) For the purposes of subsection (2)(c), a debtor has rights in goods which are—

- (a) leased to the debtor; or
- (b) sold to the debtor under a conditional sale agreement and an agreement to sell subject to retention of title,

when the debtor obtains possession of the goods.

(6) For the purposes of subsection (2)(c), a debtor does not have rights in—

- (a) crops until they become growing crops;
- (b) the young of animals until they are conceived;
- (c) minerals until they are extracted; or
- (d) trees until they are severed.

## **12. Attachment of security interest in property after it is acquired.**

(1) Subject to subsection (2), where an agreement provides for a security interest in property after it is acquired, the security interest attaches without specific appropriation by the debtor.

(2) Where an agreement provides for a security interest in property after the property is acquired, the security interest does not attach to consumer goods, unless—

- (a) the security interest is a purchase money security interest;
- (b) the consumer good is an accession; or

- (c) the security interest is in collateral obtained by the debtor as a replacement for collateral which is the subject of the agreement.

### **13. Future advances.**

An agreement to create a security interest may provide for future advances.

### **14. Rights and duties where collateral is in possession of secured party.**

(1) A secured party has a duty to use reasonable care to preserve collateral in his or her possession.

(2) In the case of a negotiable instrument or chattel paper, reasonable care referred to in subsection (1) includes taking necessary steps to preserve rights against prior parties, unless otherwise agreed.

(3) Unless otherwise agreed, where collateral is in the possession of the secured party---

- (a) reasonable expenses, including the cost of any insurance incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;
- (b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance cover;
- (c) the secured party may hold as additional security, any increase or profits, except money received from the collateral, but money so received, unless remitted to the debtor, must be applied in reduction of the secured obligation;
- (d) the secured party must keep the collateral identifiable, but fungible collateral may be mixed; and
- (e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(4) A secured party is liable under section 96 for failure to discharge any obligation imposed by the preceding subsections but does not lose his or her security interest.

(5) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to a court order or, except in the case of consumer goods, in the manner and extent agreed.

(6) Subsections (1), (2), (3), (4) and (5) apply whether or not possession arises from the default of the debtor.

### **15. Secured party to supply information.**

(1) A debtor, a judgment creditor, a person with a security interest in the personal property of the debtor, or an authorised agent of any of these, may send to the secured party a request that the secured party approves or corrects and returns to the debtor an accompanying signed statement, which—

- (a) specifies the aggregate amount of unpaid indebtedness, at a specified date; or
- (b) where the collateral is identified, lists the collateral.

(2) The secured party shall, not later than ten working days after the day on which the request is received and any required fee is paid under subsection (4), whichever is the later—

- (a) subject to subsection (3), comply with the request by sending written confirmation or correction; and
- (b) where the secured party no longer has an interest in the obligation or collateral at the time the request is received, send to the debtor a statement specifying the name and address of any successor in interest, known to him or her.

(3) Where the secured party claims a security interest in the whole of a particular type of collateral owned by the debtor, the secured party may indicate that fact in the written reply and need not approve or correct list of the collateral.

(4) A secured party may require payment of a fee of a prescribed amount before complying with any demand under subsection (2), but the debtor is entitled to a reply without charge, at least once every six months.

(5) Where the secured party fails to comply with subsection (2), the court taking account of a reasonable excuse of the secured party, may make an order—

- (a) requiring the secured party to comply;
- (b) extending the time for compliance;
- (c) requiring the secured party to pay the legal costs of the person making the request calculated on an advocate and client basis; or
- (d) requiring any person to take any other steps it considers necessary to ensure compliance.

(6) Where, without reasonable excuse, the secured party fails to comply with any order made under subsection (5), the court may order that the security interest of the secured party in respect of which the request was made is to be treated as unperfected or extinguished and that any related registration be discharged.

(7) Where a secured party, without reasonable excuse, fails to comply with subsection (2) or with a court order made under subsection (5), the secured party is liable under section 96 for any loss or damage suffered by reliance on false information supplied by the secured party.

(8) Where a person properly includes in his or her request, a statement made in good faith, of the obligation or a list of collateral, a secured party may claim against the person a security interest in the statement, if the statement appears to be misleading.

(9) A person who sends a statement to the secured party under subsection (1) is estopped from denying the accuracy of the contents of the statement.

(10) For the purposes of this section, secured party includes a person who was a secured party at any time within the preceding twelve months.

**16. Requirements for enforcement against third parties.**

(1) A security interest may be enforced against a third party, including a purchaser of the collateral, a creditor, a judgment creditor and a landlord distraining for rent, a trustee in bankruptcy, liquidator, receiver or administrator where—

- (a) the debtor signs a security document that contains an identifying description of the collateral, which on its true construction indicates that the purpose of the agreement was the creation of a security over the collateral, except where the collateral is in the possession of the secured party, or in the possession of another person on behalf of the secured party, and
- (b) the security interest is perfected.

(2) A security document referred to in subsection (1) may be in a form prescribed in regulations made under this Act.

**PART III—PERFECTION AND PRIORITY OF SECURITY INTEREST.**

**17. Perfection of security interest.**

A security interest is perfected where—

- (a) it is attached; and
- (b) all steps required for perfection under this Act are completed regardless of the order in which the attachment and steps occur.

**18. Perfection by registration.**

Subject to section 17, a financing statement shall be registered to perfect all security interests, except—

- (a) a security interest in collateral in possession of a secured party under section 19;

- (b) a security interest temporarily perfected for a period of ten days under section 20;
- (c) a security interest in proceeds for a period of ten days under section 21;
- (d) a security interest registered under the Chattels Transfer Act; and
- (e) a security interest in consumer goods which are not vehicles, aircraft or vessels.

**19. Perfection by possession of collateral.**

(1) Subject to section 17, possession of collateral by a secured party or on behalf of the secured party, perfects a security interest in—

- (a) chattel paper;
- (b) goods;
- (c) money;
- (d) a negotiable document of title;
- (e) a negotiable instrument; or
- (f) a security,

but only while it is actually held as collateral.

(2) Subject to sections 20 and 21, a security interest in money or a negotiable instrument, other than a certified security or a negotiable instrument which constitutes part of a chattel paper is perfected only by possession under subsection (1).

(3) Where a collateral is an uncertificated security, a secured party is deemed to take possession of the security when a transfer of the security to the secured party is registered.

(4) Where a collateral, other than goods covered by a negotiable document of title, is held by a bailee, the secured party is taken to have possession from the time the bailee receives notification of the interest of the secured party.

**20. Temporary perfection where collateral is delivered or is available to debtor.**

(1) Subject to section 17, a perfected security interest in a negotiable instrument or a security remains temporarily perfected for the first ten days after the day on which the secured party delivers the collateral to the debtor for the purpose of—

- (a) sale or exchange;
- (b) presentation, collection or renewal; or
- (c) registration of a transfer.

(2) A perfected security interest in a negotiable document of title or in goods held by a bailee and not covered by a negotiable document of title remains temporarily perfected for the first ten days after the day on which the secured party makes the collateral available to the debtor for the purpose of—

- (a) sale or exchange;
- (b) loading, unloading, storing, shipping or trans-shipping; or
- (c) manufacturing, processing, packaging or dealing with the goods in preparation for their sale or exchange.

(3) Where a security interest temporarily perfected under subsection (1) or (2) is not perfected by another method before the expiration of the period referred to in those subsections—

- (a) it becomes unperfected at the expiration of that period; and
- (b) the provisions of this Act relating to the perfection of a security interest apply to it as if the security interest had not been temporarily perfected under this section.

**21. Security interest in proceeds.**

(1) Subject to subsection (2), where collateral is dealt with to give rise to proceeds, the security interest—

- (a) continues in the collateral, unless the secured party expressly or impliedly authorises the dealing; and
- (b) extends to the proceeds.



(2) Where the secured party enforces the security interest in both the collateral and the proceeds, the amount secured is limited to the market value of the collateral at the date of the dealing.

(3) A security interest in proceeds is continuously perfected for the purposes of this Act where the security interest in the original collateral is perfected by the registration of a financing statement which contains—

- (a) a description of proceeds, if that description would be sufficient to perfect a security interest in an original collateral of the same kind; or
- (b) a description of the original collateral, if—
  - (i) the proceeds are of a kind that are within that description; or
  - (ii) the proceeds are cash proceeds.

(4) Where the security interest in the original collateral was perfected by a method other than the method referred to in subsection (3), the security interest in the proceeds is continuously perfected for the purposes of this Act for the first ten working days after the day on which the security interest attached to the proceeds, but—

- (a) becomes unperfected at the expiration of that period; and
- (b) the provisions of this Act relating to the perfection of a security interest apply to it as if the security interest had not been perfected under this subsection.

## **22. Continuity of perfection.**

(1) A security interest originally perfected under this Act by one method and later perfected by another method, without an intermediate period during which it is unperfected, is deemed to be continuously perfected for the purposes of this Act.

(2) Where the secured party is a transferee, the security interest has the same priority as it has at the time of the transfer.

**23. Protection of purchasers of goods.**

(1) A purchaser of goods sold in the ordinary course of business of the seller, takes the goods free of a perfected security interest created by the seller, even if the purchaser is aware of the existence of the perfected security interest.

(2) A purchaser of consumer goods takes the goods free of a perfected security interest, if the purchaser—

- (a) gives new value for the interest acquired; and
- (b) buys the goods without knowledge of the existence of a security interest, unless—
  - (i) the purchaser buys motor vehicles in the ordinary course of his or her business; and
  - (ii) the consumer good is a motor vehicle.

(3) A purchaser of goods sold other than in the ordinary course of business of the seller, takes the goods free of a security interest to the extent that it secures future advances made—

- (a) after the secured party acquires knowledge of the sale; or
- (b) more than twenty working days after the sale,

whichever occurs first, unless the security interest was made under a commitment entered into without the knowledge of the purchaser and before the expiration of the twenty working day period.

(4) For the purposes of this section—

- (a) a purchaser of goods includes a person who acquires possession of goods by sale, hire-purchase, under a contract for services or materials, barter, or under a lease;
- (b) a seller or purchaser sells or buys goods in the ordinary course of business if it is the business of the seller or purchaser to sell or buy goods of that kind or nature.

**24. Protection of purchasers of chattel paper, negotiable instruments, documents of title and securities.**

(1) A purchaser of a chattel paper or negotiable instrument who gives new value and takes possession of the chattel paper or negotiable instrument in the ordinary course of business, has priority over a perfected security interest in the chattel paper or negotiable instrument if the purchaser does not know of the security interest at the time of taking possession.

(2) Nothing in this Act limits the right of—

- (a) a holder in due course, of a negotiable instrument;
- (b) a holder to whom a negotiable document of title is duly negotiated; or
- (c) a purchaser in good faith of a security,

to take priority over an earlier perfected security interest.

**25. Priorities among conflicting security interests in same collateral.**

(1) Subject to this Act, priority among security interests in the same collateral is determined according to the following conditions—

- (a) priority among perfected security interests is determined by the order of—
  - (i) registration;
  - (ii) possession; and
  - (iii) temporary perfection under sections 20,

whichever first occurs in relation to a particular security interest;

- (b) a perfected security interest has priority over an unperfected security interest;
- (c) priority among unperfected security interests is determined by the order of attachment of the security interests.

- (2) For the purposes of subsection (1)—
- (a) a continuously perfected security interest remains perfected by the method by which it was originally perfected;
  - (b) subject to section 21, the time of registration, possession or perfection of a security interest in original collateral is also the time of registration, possession or perfection of the security interest in its proceeds; and
  - (c) a security interest has the same priority in respect of all advances, including future advances.

**26. Priority of purchase money security interests.**

A purchase money security interest in collateral has priority over any other security interest in the same collateral or its proceeds where—

- (a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; or
- (b) the purchase money security interest is perfected not later than ten working days after the time the debtor receives possession of the collateral.

**27. Priority where registration ceases to be effective.**

(1) Except as provided in subsection (2), the fact that the registration perfecting a security interest ceases to be effective as a result of—

- (a) failure to renew the registration of a financing statement;
- (b) the discharge of the registration without authorisation; or
- (c) an error,

does not affect the priority of a security interest if the secured party registers a financing statement in respect of the security interest not later than ten working days after the day on which the registration ceases to be effective or is discharged.

(2) A competing perfected security interest has priority over a security interest in respect of which a financing statement is registered under subsection (1) to the extent that the competing security interest secures advances made or contracted for—

- (a) after the registration of the security interest ceases to be effective or is discharged; or
- (b) before the registration of the financing statement.

### **28. Priority of negotiable document of title.**

A perfected security interest in a negotiable document of title has priority over a security interest in the goods perfected by another method after the issue of the negotiable document of title.

### **29. Priority of lien.**

A lien over goods with respect to which a person furnishes materials or services in the ordinary course of business has priority over a perfected security interest in the same goods unless the lien is given by an instrument which provides that the lien does not have priority.

### **30. Priority of security interests in fixtures.**

(1) Goods such as partition walls of commercial office premises, to which a security interest has attached, remain goods for the purposes of this Act even if they are subsequently fixed to any land or building, and they may be removed by a secured party who becomes entitled to possession of them under a security agreement.

(2) A secured party who has a right to remove any goods fixed to any land or building shall not remove them without first giving to the owner or a person for the time being in possession of the land or building, notice of not less than ten working days, of the intention to remove the goods.

(3) A secured party who has a right to remove goods from any land or building shall exercise the right in a manner that—

- (a) does not cause greater damage or injury to the land or building or other property situated on the land, than is necessarily incidental to the removal of the goods; and
- (b) does not put the occupier of the land or building to greater inconvenience than is necessarily incidental to the removal of the goods.

### **31. Priority of security interests in crops.**

(1) A perfected security interest in crops for new value given to enable a debtor produce the crops during the production season, given not more than three months before the crops become growing crops takes priority over an earlier perfected security interest.

(2) Subsection (1) shall apply where the earlier perfected security interest secures obligations due more than six months before the crops become growing crops, even though the person giving new value had knowledge of the earlier security interest.

(3) Notwithstanding the provisions of this Act, a security interest in crops is a secured interest in the crops not only while the crops are growing, but afterwards when cut or separated from the soil, and whether stacked or stored on the land where the crops were grown or on any other land or premises.

(4) A security interest in crops does not prejudicially affect the rights of a lessor or mortgagee of any land on which the crops are growing, except where the lessor or mortgagee consents in writing to the creation of that security interest.

(5) A perfected security interest in crops is not extinguished or prejudicially affected by a subsequent sale, lease, or mortgage, or encumbrance upon the land on which the crops are growing.

(6) A security interest in crops does not give a security over crops that cannot in the ordinary course of farming be harvested within one year from the date of the agreement creating the security interest.

(7) Subsections (1) and (4) of section 30 apply with all necessary modifications to the seizure and removal of growing crops from land.

### **32. Priority of security interests in accessions.**

(1) Except as provided in this section, and subject to section 33, a security interest in an accession has priority, as to the accession, over a claim of a person to the goods to which the accession attaches, for the purposes of other goods.

(2) A security interest that attaches to goods after they become an accession is postponed in priority to the interests of a person with an interest in the other goods at the time the security interest attaches to the accession, who has not—

- (a) consented to the security interest in writing; or
- (b) disclaimed an interest in the accession in writing.

(3) A security interest in an accession does not take priority over—

- (a) a subsequent purchaser for value of an interest in the goods;
- (b) an assignee for value of the interest of a person with an interest in the security interest at the time the goods become an accession; or
- (c) a person with an earlier perfected security interest in the goods who, without knowledge of the security interest and before its perfection—
  - (i) makes an advance under the agreement creating the security interest, to the extent of the advance; or
  - (ii) acquires a right to retain the whole in satisfaction of the obligation secured.

(4) A secured party who has a right to remove an accession from the whole, shall exercise the right in a manner that—

- (a) does not causes greater damage or injury to the other goods than is necessarily incidental to the removal of the accession; and
- (b) does not put the person in possession of the whole, to greater inconvenience than is necessarily incidental to the removal of the accession.

(5) A person, other than a debtor, who has an interest in the goods at the time the goods subject to the security interest become an accession, is entitled to compensation for damage caused to his or her interest in the goods during the removal of the accession.

(6) Notwithstanding subsection (5), a person, other than a debtor, who has an interest in the goods at the time the goods subject to the security interest become an accession, is not entitled to compensation for diminution in the value of the goods caused by the absence of the accession or by the necessity of its replacement.

(7) A person entitled to compensation under subsection (5) may refuse to remove the accession until the secured party gives adequate security for compensation.

### **33. Priority where goods are processed or mixed.**

(1) A perfected security interest in goods that subsequently become part of a product or bulk, continues in the product or bulk where—

- (a) the goods are so manufactured, processed, assembled or mixed that their identity is lost in the product or bulk; or
- (b) a financing statement covering the original goods also covers the product into which the goods are manufactured, processed or assembled.

(2) In a case to which subsection (1) (b) applies, separate security interest in part of the original goods which are manufactured, processed or assembled into the product shall not be claimed under section 32.



(3) Where more than one perfected security interest continue in the product under subsection (1), the security interests rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the final product.

**34. Priority subject to postponement.**

(1) A secured party may postpone the priority of his or her security interest to another interest.

(2) A postponement of priority is effective between the parties according to its terms and may be enforced by a third party, if the third party is the person or one of the people for whose benefit the postponement is intended.

PART IV—REGISTRATION

**35. Designation of registrar.**

The Minister shall, by statutory instrument designate a public officer as registrar of chattels securities for the whole of Uganda and an assistant registrar for such areas as may be determined by the Minister.

**36. Registrar's official seal.**

The registrar shall have an official seal, the form, use and custody of which shall be prescribed by regulations.

**37. Register of chattels securities.**

The registrar shall establish and maintain a register of security interests in personal property to be known as the register of chattels securities.

**38. Register book and index to be kept.**

(1) The registrar shall—

(a) cause every instrument registered in the register book to be numbered;

(b) mark on every registered instrument, the date and number of registration.

(2) The registrar shall keep an index of the names of grantors and grantees of instruments.

(3) The registrar shall within three days after registration, transmit an instrument to the respective area, where—

- (a) the instrument describes the residence of a grantor to be in a place outside the area in which the registry is situated; or
- (b) the instrument describes a part of the chattels as being in a place outside the area.

(4) A person may search, inspect, make extracts from and obtain copies of the abstract registered, upon payment of a prescribed fee.

### **39. Mode of registration.**

Registration of an instrument shall be effected upon payment of the prescribed fee and submission to the Registrar, of—

- (a) the instrument, schedules, annexes and references to the instrument; and
- (b) a statutory declaration and photocopies of the instrument, schedules, annexures and references to the instrument.

### **40. Time for registration.**

(1) An instrument may be registered within twenty-one days from the day on which it is executed and the time of registration shall be recorded in the register.

(2) Where there are more than one grantors, the date of execution of an instrument shall be deemed to be the date of the execution by the grantor who last executes the instrument.

(3) A financing statement may be registered before or after an agreement to create a security interest is made, or at the time when a security interest attaches.

(4) The registration of a financing statement registered more than twenty working days after the agreement to create the security interest is entered into, does not perfect the security interest, if—

- (a) within twelve months of the date of registration, a trustee in bankruptcy is appointed; or
- (b) a winding up order is made, in respect of the debtor.

(5) Where the time for registering an instrument expires on a day on which the office of the registrar is closed, the registration shall be valid if made on the next following day on which the office is open.

(6) The day on which an instrument is executed shall not be included in the period within which the instrument may be registered under subsection (1), although it may be registered on that day.

#### **41. Duration and renewal or change of registration.**

(1) Registration is effective for the period of time indicated in the instrument or financing statement.

(2) Registration may be renewed by registering a financing change statement at any time before the original registration ceases to be effective, upon payment of the prescribed fee.

(3) The renewed registration is effective from the time at which the duly completed financing change statement is delivered for registration.

#### **42. Register searches.**

(1) A person may, upon payment of a prescribed fee, request for—

- (a) a search of the register against the name of a debtor;
- (b) a search of the register according to the serial number of goods of a kind that is required or permitted to be described by serial number in a financing statement;
- (c) a search according to a registration number; or
- (d) a copy of any registered financing statement or other registered document.

(2) A certified copy of an instrument or a financing statement is admissible in evidence as a true copy of the original.

**43. Certified copies.**

A person may have a certified copy of a registered instrument or financing statement upon payment of the prescribed fee.

**44. Fees.**

A person who desires to register an instrument, a financing statement or document, or requests for a search of the register, shall pay the prescribed fee.

## PART V—INSTRUMENTS.

**45. Attestation of instrument.**

An instrument shall be attested by at least one witness, who shall add his or her signature, address and occupation, to the instrument.

**46. Instrument not duly attested and registered to be void.**

An instrument which is not duly attested or registered shall be void, except as against the grantor, in respect of the chattels comprised in the instrument.

**47. Chattel comprised in registered instrument not to be in possession of grantor.**

A chattel comprised in an instrument, which has been duly registered under this Act shall not be taken to be in the possession or disposition of the grantor, within the meaning of the Bankruptcy Act.

**48. Priority of two or more instruments registered for the same chattel.**

Where two or more instruments are registered for the same chattel, priority of the instruments shall be according to the time of their registration.

**49. Form of instrument.**

An instrument made under this Act shall be in the prescribed form.

**50. Instrument to take effect upon registration.**

An instrument shall be taken to be made on the day on which it is executed, but shall take effect from the time of its registration.

**51. Instrument to have inventory of chattels.**

(1) An instrument shall contain an inventory of chattels comprised in the instrument, or a description of the chattels, which is reasonably sufficient to make the chattels comprised in the instrument capable of identification.

(2) Except where it is expressly provided, an instrument shall give a good title only to the chattels described in the instrument and shall be void, except as against the grantor, in respect of the chattels which are not described.

**52. Instrument not to affect chattels acquired after execution of instrument.**

Except where it is expressly provided in this Act, an instrument is void, except as against the grantor, in respect of chattels specifically described in the instrument, of which the grantor was not the true owner at the time of the execution of the instrument.

**53. Instrument made subject to condition or declaration of trust.**

(1) Where an instrument is made subject to a condition or a declaration of trust, which is not contained in the instrument, the condition or declaration of trust shall, for the purposes of this Act, be taken to form part of the instrument, and shall be written on the instrument.

(2) A condition or a declaration of trust under subsection (1) shall be void, in respect of the chattels comprised in the instrument, except as against the grantor.

(3) Notwithstanding subsection (1), where a condition in the instrument requires payment of money, the condition need not be written in the instrument, if the date, names of the parties and the nature of the security are set out in the schedule to the instrument.

**54. Instrument securing current account.**

An instrument securing a current account shall continue in full force notwithstanding the fact that the grantor may be in credit on that account.

**55. Instruments comprising stock.**

(1) An instrument comprising stock shall, unless the contrary is expressed, include—

- (a) all stock described in the instrument and the natural increase of the stock;
- (b) the stock of the grantor, branded, earmarked or marked as specified in the instrument, or the stock which the grantor covenants or agrees in the instrument, to brand, earmark or mark;
- (c) the stock which after the execution of the instrument is feeding on land or premises mentioned in the instrument, whether or not the stock is removed from the land or premises.

(2) The stock comprised in an instrument shall be described in the schedule to the instrument by brand, earmark or mark or marks upon the stock indicating the sex, age, name, colour or any description by which the stock can be reasonably identified.

(3) The land or premises on which the stock is or is intended to be fed or kept shall be described or mentioned in the instrument or in the schedule to the instrument.

(4) A grantee shall have a right in all stock comprised in the instrument or in the schedule to the instrument.

**56. Instrument comprising crops.**

(1) An instrument may be granted over the crops described or referred to in the instrument, which, at the time of execution of the instrument are planted or growing upon the land mentioned in the instrument.

(2) An instrument under subsection (1) shall entitle the grantee of the instrument to crops mentioned in the instrument, while the crops are growing and when they are cut or separated from the soil and whether the crops are stored on the land where they were grown or in another place or whether the nature of the crop is altered by a process of curing or manufacture.

**57. Substitution of chattels described in instrument.**

(1) Parties to an instrument may expressly provide that the grantor may acquire different chattels in substitution for all or any of the chattels described in a schedule to the instrument.

(2) Where substitution is effected under subsection (1), the chattels substituted shall be taken to be chattels comprised in the schedule to the instrument.

**58. Transfer of instrument.**

(1) A transferee, his or her executor, administrator or assignee shall, in respect of the instrument transferred, have the same rights, powers and remedies, and be subject to the same obligations as the transferor.

(2) An instrument may be transferred by a document, in the prescribed form.

**59. Registration of transfer of instrument.**

A transfer of an instrument may be registered at any time after its execution, in accordance with section 39.

**PART VI—FINANCING STATEMENT.****60. Financing statement.**

(1) A financing statement may relate to one or more agreements creating a security interest.

(2) The registration of a financing statement relating to an interest in personal property does not create a presumption that the interest is a security interest for the purposes of this Act.

(3) Registration of a financing statement is not constructive notice of knowledge to a third party, of its existence or content.

**61. Registration of financing statement.**

(1) Subject to regulations made under this Act, the registrar may, for the purpose of registering a financing statement, process and record the information contained in the financing statement.

(2) A document containing information recorded under subsection (1) shall be accepted for all purposes, as if it was the original financing statement.

(3) Information in a registered financing statement or a registered document may be removed from the record of the registrar only where—

- (a) the registration is no longer effective;
- (b) a financing change statement discharging or partially discharging the registration is received;
- (c) the registrar renews or changes the registration under section 41; or
- (d) the registrar discharges or partially discharges a registration in accordance with an order of court.

(4) The validity of a registered financing statement is not affected by a defect, irregularity, omission or error in the financing statement or in the execution or registration of the financing statement, unless the defect, irregularity, omission or error is seriously misleading.

(5) Where collateral includes goods of a kind that is required or permitted by regulations to be described in a financing statement by serial number, the registration is invalid, if the financing statement or the registration contains a seriously misleading defect, irregularity, omission or error in the name of the debtor or in the serial number of the goods.

(6) A defect, irregularity, omission or error may be found to be seriously misleading, even if no one was actually misled by it.

(7) Failure to provide in a financing statement, a description of any item or kind of collateral shall not affect the validity of the registration of the financing statement, with respect to another item or kind of collateral.



(8) A secured party or a person named as a secured party in a financing statement, shall, within ten working days after registration of a financing statement, give the debtor named in the instrument, a copy of the financing statement, unless the debtor waives in writing, his or her right to receive the financing statement.

**62. Financing change statement for transferred security interest.**

(1) Where a secured party with a security interest in respect of which a financing statement is registered transfers the interest or a part of the interest, the transfer may be recorded by submitting a financing change statement for registration.

(2) Where a security interest in part of the collateral is transferred under subsection (1), the financing change statement shall contain a description of the collateral to which the transfer relates.

(3) Where a secured party transfers a security interest which is not perfected by registration, a financing statement naming the transferee as the secured party, may be registered in respect of the security interest.

(4) A financing change statement recording a transfer of a security interest may be registered before or after the transfer.

(5) Upon registration of a financing change statement under subsection (4), the transferee becomes the secured party.

(6) Where two or more secured parties agree to vary the priority of a security interest in respect of which a financing statement is registered or is to be registered, the secured party whose security interest priority is conceded shall—

- (a) register a financing change statement, recording the agreed order of priorities;
- (b) register the duration of the agreement, where the duration of the agreement is shorter than the period for which the registration of the financing statement is effective.

(7) Any loss or damage resulting from a search result which does not disclose a change in the order of priorities of security interests is reasonably foreseeable loss or damage for the purposes of section 96.

**63. Collateral in registered financing statement.**

(1) For purposes of this section—

“debtor” includes any person identified on a registered financing statement as a debtor;

“secured party” includes any person identified on a registered financing statement as a secured party.

(2) A debtor or a person with an interest in property that falls within the description of collateral in a registered financing statement may make a written demand to the secured party requiring—

- (a) the registration to be discharged where all the obligations under the security agreement to which it relates have been performed, or where a security agreement does not exist between the secured party and the debtor;
- (b) the registration to be amended or discharged to reflect the terms of an agreement in which the secured party agrees to release part or all of the collateral described in the financing statement; or
- (c) the description of collateral contained in a financing statement to be amended to exclude the items or properties which do not form part of the collateral in the agreement made between the secured party and the debtor.

(3) Not later than ten working days after the day on which the demand referred to in subsection (2) is given, the secured party shall—

- (a) register a financing change statement amending or discharging the registration; or
- (b) apply for a court order to maintain or renew the registration.

(4) Where the secured party fails to register a financing change statement as required under subsection (3), the debtor or a person who makes the demand, may request the registrar to give notice to the secured party, that registration is to be renewed by the registrar, in accordance with the demand, on the expiry of twenty working days after the notice, unless the secured party registers an order of court maintaining the registration.

(5) The registrar shall renew the registration in accordance with a demand made under subsection (4), where a secured party does not, within twenty days upon receipt of the notice—

- (a) register a financing change statement amending or discharging the registration, or
- (b) apply for a court order to maintain or renew the registration.

(6) A debtor may, under section 96, sue the secured party for any damages or loss incurred as a result of failure by the secured party to comply with the demand made under subsection (2).

#### **64. Transfer of debtor's interest in collateral or change of debtor's name.**

(1) Where a secured party gives consent to the transfer by a debtor of all or part of the interest of the debtor in collateral which is subject to a security interest perfected under section 18, the security interest of the secured party in the transferred collateral is postponed in priority—

- (a) to a security interest in the transferred collateral that is perfected in the period beginning on the eleventh day after the transfer and ending at the time at which the secured party submits for registration, a financing change statement naming the transferee of the collateral as the new debtor, or takes possession of the collateral, whichever is the earlier;
- (b) to an interest in the transferred collateral, other than a security interest that arises in the period referred to in paragraph (a); or

- (c) to a security interest in the transferred collateral perfected in the first ten days after the day of the transfer, if, within that period, a financing change statement is not submitted for registration in respect of the security interest mentioned in paragraph (a), naming the transferee of the collateral as the new debtor.

(2) Where, without the consent of the secured party, the debtor transfers all or part of the interest of the debtor in collateral which is subject to a security interest perfected under section 18 and the secured party has knowledge of the information required to register a financing change statement showing the transferee as the new debtor, the security interest of the secured party in the transferred collateral is postponed in priority—

- (a) to any other security interest in the transferred collateral that is perfected in the period beginning on the eleventh day after the day the secured party has knowledge of the information required to register a financing change statement and ending at the time at which the secured party submits for registration a financing change statement naming the transferee of the collateral as the new debtor or takes possession of the collateral, whichever is the earlier;
- (b) to an interest in the transferred collateral, other than a security interest, that arises in the period referred to in paragraph (a); or
- (c) to any other security interest in the transferred collateral perfected in the first ten days after the day on which the secured party has knowledge of the information required to registrar a financing change statement, if, within that period, a financing change statement is not submitted for registration in respect of the security interest mentioned in paragraph (a), naming the transferee of the collateral as the new debtor.

(3) Notwithstanding subsection (2), a financing change statement with respect to any intermediate transferee may not be registered.

(4) Where in respect of a security interest perfected under section 18 there has been a change in the name of the debtor and the secured party has knowledge of the new name of the debtor, the security interest of the secured party in the collateral is postponed in priority—

- (a) to any other security interest in the collateral that is perfected in the period beginning on the eleventh day after the day the secured party has knowledge of the new name of the debtor and ending at the time at which the secured party submits for registration a financing change statement indicating the new name of the debtor or takes possession of collateral, whichever is the earlier;
- (b) to an interest in the collateral, other than a security interest, that arises in the period referred to in paragraph (a); or
- (c) to any other security interest in the collateral perfected in the first ten working days after the day on which the secured party has knowledge of the new name of the debtor, if, within that period, a financing change statement is not submitted for registration in respect of the security interest mentioned in paragraph (a), indicating the new name of the debtor.

#### PART VII—RIGHTS AND REMEDIES

##### **65. Right to compensation.**

A person who suffers loss or damage by reason of any matter specified in section 66 is entitled to compensation from the State.

##### **66. Matters in respect of which compensation is payable.**

For the purposes of section 65, compensation is payable where—

- (a) the registrar fails to register a financing statement submitted for registration under this Act;
- (b) the registrar enters in the register particulars of a security interest which do not correctly reflect the information in the financing statement;

- (c) the registrar makes a statement which does not correctly represent the information about a specified debtor or collateral as it appears in the register;
- (d) the registrar fails to renew the registration of a security interest where a financing change statement has been submitted for registration;
- (e) the registrar fails to change the registration of a security interest required to be changed in accordance with this Act or regulations made under this Act;
- (f) the registrar renews registration of a security interest which should not have been renewed; or
- (g) the registrar removes information which should not have been removed from the records.

**67. Maximum compensation payable.**

The amount of compensation payable to a secured party shall not exceed the amount of the debt, pecuniary obligation or value of the obligation that is secured by the security interest which is still owing to the secured party at the time when the payment of compensation is to be made.

**68. Factors that may prevent or reduce compensation payments.**

(1) Where any loss or damage is occasioned wholly or partly by an act or omission of a person other than the registrar, the compensation that would otherwise be payable under section 65 may be reduced as the court considers appropriate.

(2) Court shall not make an order for payment of compensation to an applicant unless the court is satisfied that because of circumstances beyond the control of the applicant or for reason that ought to be reasonably excused, the cause for the compensation was not shown to the satisfaction of the registrar.

(3) Subsection (2) shall apply where—

- (a) a person applies to court for compensation in respect of a loss or damage suffered by reason of a renewal or change of registration or the removal of any information from the records of the registrar, where the registrar, before renewing or changing the registration or removing the information, gave the person entered in the register as the secured party, a notice requiring that person to show cause why the registration should not be renewed, changed or the information removed; and
- (b) the person entered in the register as the secured party under paragraph (a), fails within ten days of receiving the notice, to show cause to the satisfaction of the registrar why the registration should not be renewed or changed, or the information removed.

#### **69. Exemption from liability.**

(1) Except as provided in section 65, proceedings shall not lie against the State, or registrar, or a person engaged in the administration of this Act, arising from an action or omission under this Act, unless it is shown that the person acted in bad faith.

(2) Nothing in subsection (1) applies in respect of an application for judicial review.

#### **70. State's right of subrogation.**

(1) Where compensation is paid to an applicant, the State is subrogated to the rights of the applicant against a person indebted to the applicant whose debt was the basis of the loss or damage in respect of which the claim was paid.

(2) Where an applicant is compensated by an amount less than the value of the interest the applicant would have had if the error or omission had not occurred, the right of subrogation under subsection (1) does not prejudice the ability of the applicant to recover, in priority to the State, an amount equal to the difference between the amount paid to the applicant and the value of the interest the applicant would have had if the error or omission had not occurred.

**71. Remedies available where debtor in default.**

(1) Where a debtor is in default under an agreement to create a security interest, a secured party may—

- (a) sue the debtor on the claim; or
- (b) realise the collateral in accordance with this Part.

(2) Where the collateral is a document of title, the secured party may proceed either to the document of title, or to the goods covered by it.

(3) Where a secured party reduces any claim to judgment, the lien of any levy which may be made upon the collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral.

**72. Real and personal collateral.**

Where an agreement to create a security interest covers both real and personal property, the secured party may, if the debtor is in default—

- (a) proceed as to the personal property under this Part; or
- (b) proceed as to both the real and the personal property in accordance with the rights and remedies of the secured party in respect of the real property, in which case the provisions of this Part do not apply.

**73. Realisation of collateral.**

(1) Where a debtor is in default, a secured party may realise collateral by—

- (a) appointing a receiver under section 74;
- (b) taking possession of the collateral under section 75;
- (c) sale under section 76;
- (d) foreclosure under section 82; or
- (e) collection under section 83.

(2) For the purposes of this Part, sale includes lease or other disposition.



(3) Section 14 applies where possession of the secured party arises from the default of the debtor.

#### **74. Appointment of receiver.**

(1) Where a debtor is in default, a receiver may be appointed in respect of the collateral, by—

- (a) the secured party, where a security document in respect of the collateral so provides; or
- (b) the court.

(2) Where the security document confers a power to appoint a receiver, the power extends to the appointment of two or more receivers.

(3) Before appointing a receiver under this section, the secured party shall serve a notice on the debtor and shall not make the appointment until fifteen working days from the date of service of the notice, lapse.

(4) A receiver appointed under this section shall exercise the powers, rights and duties of a receiver specified under the Mortgage Act.

#### **75. Possession by secured party.**

(1) Where a debtor is in default, unless otherwise agreed, a secured party has the right to take possession of the collateral without a court order, provided this can be effected without a breach of the peace.

(2) Without removal, a secured party may render equipment unusable and dispose of collateral on the premises of the debtor under section 76.

#### **76. Sale by secured party.**

(1) Where a debtor is in default, a secured party may sell any or all of the collateral in its condition or following any commercially reasonable preparation or processing.

(2) The proceeds of a sale made under subsection (1) shall be applied in the following order—

- (a) to payment of the reasonable expenses of retaking, holding, preparing for sale, selling, and to the extent provided for in the agreement, the reasonable legal costs incurred by the secured party calculated on an advocate and client basis;
- (b) to the satisfaction of indebtedness secured by the security interest under which the sale is made;
- (c) subject to subsection (3), to the satisfaction of indebtedness secured by any subordinate security interest in the collateral;
- (d) subject to subsection (4), if the security interest secures an indebtedness, the residue, if any, to the debtor, or, if the secured party knows that the collateral is not owned by the debtor, to the owner.

(3) A secured party shall apply the proceeds under subsection (2) (c) only—

- (a) if before distribution of the proceeds is completed, reasonable proof of the subordinate security and demand for the proceeds is received; and
- (b) to the extent of the undistributed proceeds, where notification of this is received.

(4) Where the underlying transaction was a sale of receivables or a lease not securing payment or performance of an obligation, the secured party shall apply proceeds under subsection (2) (d) only if the agreement creating the security interest so provides.

(5) Sections 77, 78, 79 and 80 apply to a sale under this section.

### **77. Treatment of deficiency after sale.**

(1) Subject to subsection (2), unless otherwise agreed, a debtor but not the owner, where the owner of the goods is not the debtor, is liable for—

- (a) any deficiency that arises after sale proceeds are applied; or

(b) any deficiency that arises due to failure to comply with section 78.

(2) Where a transaction is a sale of receivables or a lease, the debtor is liable for any deficiency specified in the agreement creating the security interest.

#### **78. Mode of sale.**

(1) Sale of collateral may be by public auction, private sale or by a contract.

(2) The time, place and terms of the sale shall be commercially reasonable.

(3) Notwithstanding subsection (2), the fact that a better price could have been obtained by a sale at a different time or using a different method is not of itself sufficient to establish that the sale was not commercially reasonable.

#### **79. Notice of sale.**

(1) Where the collateral is not perishable, the secured party shall, in accordance with subsection (2), give twenty days notice of sale of the collateral.

(2) A notice of sale shall indicate—

(a) the time and place of the sale, in case of a public auction;  
or

(b) the time after which any private sale is to be made.

(3) Notice under subsection (1) shall be given to—

(a) the secured party;

(b) the debtor, unless he or she has, after the default, signed a statement renouncing or modifying his or her right to receive notice; and

(c) the owner of the collateral, where the debtor is not the owner of the collateral.

**80. Effect of sale.**

(1) When collateral is sold to a purchaser for value, the sale—

- (a) transfers to the purchaser all the rights of the debtor in the collateral;
- (b) discharges the security interest; and
- (c) discharges any security interest or lien subordinate to the security interest.

(2) Subsection (1) applies even where the secured party fails to comply with the requirements of this Part—

- (a) in the case of a public auction, where a purchaser—
  - (i) has no knowledge of any defects in the sale; and
  - (ii) does not buy in collusion with the secured party, other bidders or the person conducting the sale; or
- (b) in any other case, where the purchaser acts in good faith.

**81. Debtor's right to redeem.**

Subject to section 82, before a secured party sells or contracts to sell collateral, the debtor or the owner of the collateral where the debtor is not the owner, or a secured party may, unless otherwise agreed in writing after default, redeem the collateral by—

- (a) fulfilling all obligations secured by the collateral; and
- (b) paying costs incurred by the secured party in preparing the sale.

**82. Foreclosure.**

A secured party may apply to court for an order to foreclose the right of a debtor to redeem the collateral, under section 81.

**83. Duties of secured party.**

(1) A secured party shall notify a person who has an obligation to pay the secured party under a negotiable instrument, a chattel paper, an intangible or receivable or to take control of any proceeds to which the secured party is entitled under section 21.

(2) Subject to subsection (3), where the security agreement secures indebtedness, the secured party shall account for any surplus to the debtor or to the owner of the collateral, if the collateral is not owned by the debtor.

(3) Where the transaction was a sale of receivables or a lease not securing payment or performance of an obligation—

- (a) the debtor or, if the secured party knows that the collateral is not owned by the debtor, the owner of the collateral is entitled to any surplus; and
- (b) the debtor, and not the owner of the collateral, where the debtor is not the owner, is liable for any deficiency, if this is provided for in the agreement creating the security interest.

**84. Secured party's liability for failure to comply.**

Where a secured party does not comply with this Part, a debtor or any person entitled to notification or whose security interest is made known to the secured party prior to a sale, may apply to the court for an order—

- (a) that a sale be restrained or that the sale is conducted in accordance with agreed terms and conditions; or
- (b) for damages for any loss or damage caused by a failure to comply with the provisions of this Part, which loss or damage is reasonably foreseeable for the purposes of section 96.

**85. Rights of landlord or mortgagee.**

(1) An instrument shall not prejudicially affect the rights of a landlord or a mortgagee of any land on which crops comprised in the instrument are growing, except where the landlord or mortgagee consents to the instrument in writing.

(2) Notwithstanding subsection (1), a duly registered instrument shall not be prejudicially affected by a subsequent sale, lease, mortgage or other encumbrance of or upon the land described or referred to in the instrument or in the schedule to the instrument.

(3) For the purposes of this section, “landlord” means a person having an interest superior to that of a grantor.

#### PART VIII—SALE OF CHATTELS

##### **86. Sale of chattel.**

A chattel or any part of a chattel may be sold along with or separately from land which is mortgaged to secure payment of money secured by an instrument under this Act.

##### **87. Mode of sale.**

Where an instrument expressly or impliedly gives power to a grantee to sell all or any of the chattels comprised in the instrument without applying to court, the sale shall be by public auction, unless the grantor and encumbrancers subsequent to the grantee, if any, consent to a sale by private treaty.

##### **88. Vesting interest in chattels.**

(1) Where a debt or charge over a chattel is discharged, the interest of the grantee in the chattel shall vest in the person entitled to the equity of redemption in the chattel.

(2) The interest created under subsection (1) shall be expressed in a memorandum of satisfaction showing the extent to which the debt or charge has been discharged, subject to any lien or equity affecting the chattels.

##### **89. Grantor’s interest in chattels may be sold in execution of judgment against grantor.**

(1) Where legal process issues against the chattels of a judgment-debtor for the execution of a court order, and the chattels, or any of them, are comprised in any instrument under this Act, the officer charged with the execution of the process may, instead of seizing and selling the chattels comprised in the instrument, sell the right, title and interest of the judgment-debtor in the chattels.

(2) The purchaser of the right, title and interest in chattels under subsection (1) shall serve the grantee with a notice of the purchase and on receiving such notice, the grantee may take possession of the chattels comprised in the instrument.

(3) A grantee taking possession under subsection (2) shall be taken to hold the chattels in trust for the purchaser of the right, title and interest in the chattels, subject to payment of all money due under the instrument.

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

(5) Where the grantee does not pay over the surplus to the purchaser of the right, title and interest in the chattels, as required by subsection (4), the purchaser may bring an action against the grantee of the right, the title and interest in the chattels to recover the surplus, as money received for the use of the purchaser.

### **90. Inter-pleader process not affected by the Act.**

Notwithstanding section 43 and any other provision of this Act, an execution creditor may test the validity of an instrument by inter-pleader process.

## **PART IX—COVENANTS IMPLIED IN INSTRUMENTS**

### **91. Covenants implied in instruments.**

The covenants specified in the Second Schedule shall be implied in every instrument, and shall have the same effect as if they were expressly written in the instrument.

### **92. Covenants to be several or joint.**

The obligations and benefits arising out of covenants in an instrument may be enforced severally or jointly.

**93. Covenants to bind executors and administrators.**

Covenants, expressed or implied in an instrument, shall bind the executors, administrators and assignees of the person upon whom the covenants impose an obligation, and shall operate for the benefit of the executors, administrators and assignees of the person, or the successors and assignees of the company or corporation, for whose benefit they endure.

**94. Covenants may be varied.**

Any of the covenants specified in the Second Schedule may be expressly varied by the parties to the instrument.

## PART X—MISCELLANEOUS

**95. Defrauding or attempting to defraud grantee.**

A grantor of an instrument who, by sale or delivery without the consent of the grantee of chattels comprised in the instrument, defrauds or attempts to defraud, invalidate or impair the security of the grantee in the instrument, commits an offence and is liable on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding one hundred currency points, or both.

**96. Entitlement to damages for breach of obligations.**

Where a person fails to discharge a duty or obligation imposed on him or her under this Act, the person to whom the duty or obligation is owed and any other person who is reasonably expected to rely on the performance of the duty or obligation, may recover damages for any loss or damage that was reasonably foreseeable as likely to result from the failure.

**97. Regulations.**

(1) The Minister may by statutory instrument, make regulations generally for the giving effect to the provisions of this Act.

(2) Regulations made under this Act may prescribe—

- (a) forms to be used under this Act;
- (b) fees payable under this Act;



- (c) in connection with any contravention of the regulations—
- (i) a penalty of a fine not exceeding one hundred currency points or imprisonment not exceeding one year or both;
  - (ii) in the case of a continuing contravention, prescribe an additional penalty not exceeding fifty currency points in respect of each day on which the offence continues; and
  - (iii) a higher penalty not exceeding one hundred and fifty currency points or imprisonment not exceeding two years or both in respect of a second or subsequent contravention.

**98. Minister's power to amend Schedules.**

(1) The Minister, may, with the approval of Cabinet, by statutory instrument, amend the First Schedule.

(2) The Minister, may, by statutory instrument, amend the Second Schedule.

**99. Repeal and savings.**

(1) The Chattels Transfer Act Cap 70 is repealed.

(2) Notwithstanding the repeal under subsection (1), an instrument registered under the Chattels Transfer 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.

(3) An instrument executed but not registered before the commencement of this Act may be registered within twenty-one days after the date of commencement of this Act.

(4) Section 39 shall, with the necessary modifications, apply in respect of the registration of an instrument registered under subsection (2).

FIRST SCHEDULE

*Sections 2 and 98(1)*

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings.

## SECOND SCHEDULE

*Sections 91 and 98(2)*

## COVENANTS IMPLIED IN AN INSTRUMENT

The following covenants shall be implied in every instrument—

1. That the grantor shall pay to the grantee the principal money and interest secured by the instrument without any deductions, in accordance with the terms mentioned in the instrument;
2. That the grantor shall pay interest on any further advances that may be secured by the instrument, computed from the time of making the advances respectively, at the rate and on the dates mentioned in the instrument for the payment of interest.
3. That the grantor shall not do or allow any act or deed which prejudicially affect the assigned chattels.
4. That the grantor shall duly pay all rents due in the security in respect of any land or premises on which the chattels assigned are situated.
5. That the grantor shall keep and maintain the assigned chattels in the same condition in which they were at the date of signing the instrument.
6. That the grantor shall repair or replace any chattels which are destroyed and shall execute an instrument giving to the grantee security over the repaired or replaced chattels.
7. That the grantee shall, possess, sell or dispose of the chattels or part of the chattels by public auction without consent of the grantor, or by private treaty where the consent of the grantor has been obtained, where—
  - (a) the grantor defaults in payment of the secured money;
  - (b) the grantor breaches a covenant expressed or implied in the instrument;
  - (c) the grantor becomes bankrupt, or
  - (d) execution against the goods of the grantor is not stayed or satisfied within ten days.

8. That the grantee shall use the proceeds of the sale to pay—
- (a) the costs incurred while taking possession and sale of the chattel;
  - (b) the money owing on the secured instrument;
  - (c) fees for registering the instrument; and
  - (d) the surplus to the grantor.

**Instrument comprising stock**

9. That the grantee, his or her agent shall, enter into the land or premises where the stock comprised in the security are feeding for the purpose of viewing the state and condition of the stock.
10. That the grantor shall, upon receiving seven days' notice in writing, give the grantee, his or her agents all reasonable assistance to enable the grantee, his or her agents view the stock feeding upon the land or premises and all stock mentioned in the instrument.
11. That the grantor shall not sale, remove or alter the quality, quantity or description of the stock comprised in the instrument without the written consent of the grantee.
12. That the grantor shall brand, earmark and mark the stock in a manner prescribed the instrument.
13. That the grantor shall use proper means for maintaining the stock in a clean and healthy condition.
14. That the grantor shall pay all costs incurred for the proper management and maintenance of the land.
15. That the grantor shall, give the grantee an annual return or account of the number, ages and sexes of the stock comprised in the security and the places where the stock is feeding or kept.
16. That the grantor shall pay fees and comply with the regulations and conditions set by the owner of the land or premises on which the stock is feeding.

17. That where the grantor fails or neglects to pay fees, the grantee may make the payments and later demand from the grantee the money paid or advanced by the grantee towards the payment, with interest calculated from the time when the payment was made.
18. That the grantee shall enter into possession of the land on which the stock comprised in the instrument is feeding and shall sell the stock if the grantor fails to perform the covenants expressed or implied in the instrument.
19. That the grantor shall manage the land and stock without any interference from the grantor and that the costs or charges and interest incurred from the time of the entry, taking possession, until the sale and delivery of that stock until payment, shall be a charge upon the stock comprised in the instrument.

#### **Instrument comprising crops**

20. That the grantee shall sell the crops comprised in the instrument if the grantor does not pay the secured money.
21. That the grantee shall pay the costs incurred in gathering and selling the crops.
22. That the grantee shall sell the crops by public auction or by private treaty with the written consent of the grantor.
23. That the grantee shall use the proceeds of the sale to pay—
  - (a) the costs incurred harvesting and gathering the crops;
  - (b) the money owing on the secured instrument;
  - (c) fees for registering the instrument; and
  - (d) the surplus to the grantor.

**Cross references**

Bankruptcy Act, Cap. 67

Bills of Exchange Act, Cap. 68

Mortgage Act Cap. 229

Public Trustee Act, Cap. 161