

Uganda

## Security Interest in Movable Property Act, 2019

### Act 8 of 2019

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## Uganda

# Security Interest in Movable Property Act, 2019

## Act 8 of 2019

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Assented to on 31 March 2019

Commenced on 31 May 2019 by Security Interest in Movable Property Act (Commencement) Instrument, 2019

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

### Part I – Preliminary

#### 1. Commencement

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

#### 2. Interpretation

In this Act, unless the context otherwise requires—

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

"**accounts receivable**" means a payment of a monetary obligation that is not evidenced by a negotiable instrument or an investment security;

"**bureau**" means the Uganda Registration Services Bureau, established by the Uganda Registration Services Bureau Act, Cap. 210;

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

"**chattel**" means personal property that can be completely transferred by delivery or property in respect of which a valid document of title exists;

"**collateral**" means movable property that is subject to a security interest;

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

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

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

- (a) another secured creditor of the grantor that has a security interest in the same collateral;
- (b) another creditor of the grantor that has a right in the same collateral;

- (c) a representative of the grantor in insolvency proceedings; or
- (d) a buyer or other transferee, lessee or licensee of collateral;

**"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; 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;

**"default"** means the occurrence of an event that constitutes breach under the terms of an agreement between the grantor and the secured creditor;

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

**"document of title"** means a document 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;

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

**"financial lease"** means a lease of a tangible asset where—

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

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

**"grantor"** means—

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

**"intangible asset"** means accounts receivable, deposit accounts, electronic securities and intellectual property;

**"Intellectual property"** means—

- (a) literary, scientific and artistic works protected under the Copyright and Neighbouring Rights Act, 2006;
- (b) industrial property rights protected under the Industrial Property Act, 2014;
- (c) trade mark as protected in the Trademarks Act, 2010; and
- (d) any other related right.

**"inventory"** means tangible assets that are—

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

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

**"Minister"** means the Minister responsible for justice;

**"Money lender"** has the meaning assigned to it under the Tier 4 Microfinance Institutions and Money Lenders Act, 2016;

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

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

**"perfected security interest"** means a security interest that is protected from third party claims through any of the methods prescribed in [section 12](#) of this Act;

**"unperfected security interest"** means a security interest that is not protected from third party claims as prescribed in this Act;

**"person"** includes a company, association or body of persons corporate or unincorporate;

**"possession"** means having physical custody of a tangible asset by a person;

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

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

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

- (a) a chargee under any type of charge or chattel mortgagee and a holder of any type of consensual lien;
- (b) a seller who reserved title in the goods sold;
- (c) a financial lessor; and
- (d) a buyer of accounts receivable, a commercial consignor and an operating lessor under an operation lease but only for purposes of publicity and priority;

**"secured obligation"** means an obligation secured by a security interest;

"**securities**" include—

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

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

- (a) a retention of title in movable property;
- (b) a right under a financial or operating lease;
- (c) a right of a transferee of accounts receivable; and
- (d) a right of the commercial consignor even if it does not secure payment or other performance of an obligation;

"**tangible assets**" has the meaning assigned to "chattel";

"**warehouse receipt**" has the meaning assigned to it under the Warehouse Receipt Systems Act, 2006.

### 3. Scope of application

- (1) This Act applies to security rights in movable property where the movable property is—
  - (a) a tangible asset located in Uganda;
  - (b) an intangible asset, where the grantor of the asset is located in Uganda;
  - (c) a tangible or intangible asset which is ordinarily used outside Uganda, where the grantor of the asset is located in Uganda;
  - (d) a movable property attached to immovable property.
- (2) This Act also applies to security interests in movable property where—
  - (a) the collateral is a deposit account maintained in a financial institution that has a place of business in Uganda;
  - (b) the transaction involves a movable property that secures a payment or the performance of an obligation, without regard to the form or ownership of the movable property including a floating charge, a fixed charge, a pledge, a debenture, a warehouse receipt and any other transaction that secures payment or performance of an obligation with movable property;
  - (c) the security interest is a lien in movable property created by judgment of court; and
  - (d) the security interest is for the sale of accounts receivable, commercial consignments and for the lease of goods for more than one year.
- (3) For the purposes of subsection (1) (a), (b) and (c), "location" is the location—
  - (a) at the time of the creation of a security interest;
  - (b) where perfection is achieved; or
  - (c) where the priority of the claimants in the security interest of a collateral is determined, at the time the dispute arose.



- (4) For the purposes of subsection (1) (b) and (c), a grantor is located in Uganda where the grantor has a place of business in Uganda and where the grantor does not have a place of business in Uganda, the ordinary residence of the grantor be deemed to be the location of the grantor.
- (5) This Act does not apply to—
  - (a) the creation, lease or transfer of an interest in immovable property;
  - (b) a sale of accounts receivable as part of the sale of a business out of which the accounts receivable arose;
  - (c) the assignment of accounts receivable where the assignment is only for the purpose of collection action; and
  - (d) the transfer of a claim for compensation of an employee.

## **Part II – Creation of security interest**

### **4. Creation of security interest**

- (1) A security interest may be created—
  - (a) in any type or combination of movable property;
  - (b) in a part of or an undivided interest in movable property;
  - (c) in a generic category of movable property; or
  - (d) in all of the movable property of the grantor.
- (2) A security interest is created by a transaction that secures payment or performance of an obligation, without regard to the form of the transaction.
- (3) An agreement for a security interest becomes enforceable where—
  - (a) the grantor or the owner, has a right in the collateral or has the power to encumber the collateral;
  - (b) the agreement—
    - (i) is signed by the grantor;
    - (ii) identifies the secured creditor and the grantor;
    - (iii) is witnessed by a third party;
    - (iv) describes the collateral in a manner that reasonably allows its identification, as may be prescribed by regulations made under this Act;
    - (v) describes the secured obligation in a manner that reasonably allows for its identification, whether pre-existing, present or future, determined or determinable, conditional or unconditional, fixed or fluctuating or a line of credit, as may be prescribed by regulations made under this Act; and
    - (vi) indicates the maximum amount for which the security interest is enforceable; and
  - (c) the secured creditor gives the collateral a monetary value.
- (4) Where the secured creditor is a money lender, the transaction shall in addition to subsection (3) only be enforceable if it complies with the provisions of Tier 4 Microfinance Institutions and Money Lenders Act.

- (5) A security interest shall be taken as given by a grantor 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 grantor to the creditor.
- (6) Where a grantor signs a transfer as a condition for a grant of a security interest under this Act, the transfer shall be void.

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

- (1) 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 grantor and the secured creditor.

## **6. Rights and duties where collateral is in possession of secured creditor**

- (1) A secured creditor 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 creditor—
  - (a) reasonable expenses, including the cost of any insurance incurred in the custody, preservation, use or operation of the collateral are chargeable to the grantor and are secured by the collateral;
  - (b) the risk of accidental loss or damage is on the grantor to the extent of any deficiency in any effective insurance cover; and
  - (c) the secured creditor may hold as additional security, any increase or profits from the collateral, except that the profits or money must be remitted to the grantor or must be applied in reduction of the secured obligation;
- (4) A secured creditor 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.
- (5) Subsections (1), (2), (3) and (4) apply whether or not possession arises from the default of the grantor.

## **7. Secured creditor to supply information**

- (1) A grantor, debtor, a judgment creditor, a person with interest in the personal property of the grantor or an authorised agent of any of these, may request the secured creditor to update him or her on the—
  - (a) status of the collateral; or
  - (b) amount of unpaid debt secured by the security interest.
- (2) The secured creditor shall, not later than ten working days after the day on which the request is received respond to the request.
- (3) Where the secured creditor fails to comply with subsection (2), a person aggrieved by that decision may apply to court which may make an order—
  - (a) requiring the secured creditor to comply;
  - (b) extending the time for compliance; or
  - (c) requiring any person to take any other steps it considers necessary to ensure compliance.

- (4) Where, without reasonable excuse, the secured creditor fails to comply with any order made under subsection (3), the court may order that the security interest of the secured creditor in respect of which the request was made is to be treated as unperfected or extinguished and that any related registration be discharged.

## **8. Continuation of security interest after transfer of collateral**

- (1) Once created, a security interest continues in the collateral notwithstanding a sale, lease, license, exchange, or other disposition, of the collateral, except as otherwise provided in this Act or agreed upon by the grantor and the secured creditor.
- (2) Unless otherwise agreed to by the parties, where a collateral that is the subject of an agreement for security interest is sold, the security interest in the collateral automatically extends to the proceeds of collateral, whether or not the agreement contains a description of the proceeds.
- (3) Where the proceeds are credited to a deposit account, and are commingled with other funds, the proceeds shall be dealt with as may be prescribed by regulations made under this Act.

## **9. Security interest in tangible assets continues in commingled goods**

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

## **10. Security interest, tangible asset and intellectual property**

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

## **11. Tangible assets covered by negotiable documents**

A security interest in a negotiable document extends to the tangible asset covered by the document, provided that the issuer of the document is in possession of the asset at the time the security interest in the document is created.

# **Part III – Perfection of security interest**

## **12. Methods of perfecting security interests in collateral**

- (1) A security interest in collateral created under Part II of this Act is perfected where—
  - (a) a notice of the security interest in the collateral is entered in the register;
  - (b) the secured creditor, or a person acting on behalf of the secured creditor has possession of the collateral; or
  - (c) the collateral is a deposit account and the secured creditor or a person acting on behalf of the secured creditor has control of the deposit account.
- (2) For purposes of subsection (1) (b), a secured creditor is not in possession of collateral that is in the actual or apparent possession or control of the grantor or an agent of the grantor.
- (3) For the purposes of subsection (1) (c), control of a deposit account exists—
  - (a) automatically upon the creation of the security interest, if the financial institution that maintains the deposit account is the secured creditor; and
  - (b) upon the conclusion of an agreement for the control of a deposit account made by the financial institution, the grantor and the secured creditor.

- (4) The method used to perfect a security interest under subsection (1) may be changed at any time and the security interest shall remain perfected notwithstanding a change in the means of perfection, provided that there is no time when the security interest is not perfected.
- (5) Where the security interest effected under subsection (1) is in respect of a document of title, the security interest that extends to the tangible asset covered by the document of title shall also be perfected.

### **13. Methods of perfecting proceeds of security interests**

- (1) Where collateral is dealt with to give rise to proceeds in form of money, accounts receivable, negotiable instruments or a right to payment of funds to a bank account, the proceeds of the collateral shall be perfected without any further action.
- (2) Where the proceeds are not of the type described in subsection (1), the secured creditor shall perfect the security interest in the proceeds using any of the methods in [section 12](#)(1) or as may be prescribed by regulations made under this Act.

### **14. Transfer of security interests**

- (1) Where all or part of a security interest that is perfected by the registration of a notice under [section 12](#) (1) (a), is transferred, the transferor shall register an amendment to the notice.
- (2) Where a security interest that is not perfected by registration is transferred, the notice in which the transferee of the security interest is disclosed as the secured creditor of the security interest shall be registered under [section 12](#) (1) (a).
- (3) Registration under this section shall be as prescribed by regulations made under this Act.

### **15. Security interest perfected outside Uganda**

- (1) Where a security interest in movable property is perfected against a third party under the law of a state other than Uganda, and the property is relocated or transferred to Uganda, this Act shall apply to the property and the security interest remains perfected.
- (2) Subsection (1) shall apply where the country in which the collateral was perfected has entered into reciprocal arrangements with Uganda to recognise and continue the perfection of security interests created in Uganda.
- (3) Nothing shall prevent a person who has perfected a security interest under the laws of a State other than Uganda to perfect the security interest in Uganda where the collateral is relocated or transferred to Uganda.

### **16. Effect of transfer of collateral outside Uganda**

- (1) This Act shall continue to apply to collateral perfected in Uganda and relocated or transferred outside the territorial jurisdiction of Uganda.
- (2) Where collateral that is perfected in Uganda is transferred beyond the territorial jurisdiction of Uganda, the collateral shall remain perfected against third party claims.
- (3) Where collateral is transferred or relocated beyond the territorial jurisdiction of Uganda, the secured creditor may in addition to the collateral already perfected, perfect another security interest using any methods in [section 12](#) or as may be prescribed by regulations.

## **Part IV – Registration of security interests in movable property**

### **17. Designation of Registrar**

- (1) The Registrar General appointed under the Uganda Registration Services Bureau Act, [Cap. 210](#) shall be the registrar of security interest in movable property under this Act.
- (2) The functions bestowed on the bureau under this Act shall be performed by the Registrar.

### **18. Register of Security Interest in Movable Property**

- (1) The bureau shall establish and maintain a register of security interests in movable property to be known as the "register of Security Interest in Movable Property".
- (2) The register shall be maintained as an electronic records system and shall specify the nature of the security interest registered and details of the personal property over which the interest is created.

### **19. Mode of registration of security interest**

- (1) A security interest in movable property shall be registered electronically in the register using an initial notice or amendment notice which shall be registered sequentially, in the order in which it is submitted for registration.
- (2) An initial notice or amendment notice shall only be registered—
  - (a) after the creation of a security interest;
  - (b) on the payment of the prescribed fees; and
  - (c) upon authorisation by the grantor in writing.
- (3) Notwithstanding subsection (2), an initial notice or amendment notice may be registered before the creation of a security interest or the conclusion of a security agreement to which the initial notice or amendment notice relates if the registration of the initial notice or amendment notice is authorized by the grantor in writing.
- (4) The register shall reflect the date and time when the information is entered in the register.
- (5) Subject to [section 25](#), an initial notice or amendment notice shall be effective from the date and time when the information in the notice is entered in the register.
- (6) For purposes of this section, a written security agreement is sufficient to constitute authorization by the grantor for the registration of an initial notice or amendment notice.

### **20. One notice sufficient for multiple security interests**

A single notice may be registered for two or more security interests created by the same grantor under two or more security interest agreements with the same secured creditor.

### **21. Registration of a lien**

- (1) A notice of a lien may be registered by the lien holder without the consent of the subject of the lien.
- (2) A notice of a lien on the property of a judgment debtor may be registered by the judgment creditor after obtaining a court order.
- (3) A notice of lien on the property of an insolvent company may be registered by the court or a liquidator appointed by the court.

## 22. Information required in an initial notice

- (1) An initial notice shall contain the following information—
  - (a) the unique identification number and address of the grantor;
  - (b) the unique identification number and address of the secured creditor or the representative of the secured creditor;
  - (c) a description of the collateral;
  - (d) the date and period of perfection of the registration; and
  - (e) any other information as may be prescribed by the Minister, by regulations.
- (2) Where there is more than one grantor or secured creditor, the required information shall be entered separately for each grantor and each secured creditor.

## 23. Period of perfection of initial notice

- (1) An initial notice is effective for the period indicated by the secured creditor in the notice.
- (2) The period of perfection of an initial notice may, within six months before the expiry of the period, be extended by registration of an amendment notice, for the period indicated by the secured creditor in the amendment notice.
- (3) Where an initial notice lapses without amendment, the security interest that was perfected by the lapsed initial notice shall be discharged.
- (4) The lapsing of an initial notice shall not preclude the secured creditor, where the grantor has not fulfilled its obligations under the agreement that created the security interest, from perfecting the security interest by any other method.

## 24. Cancellation of initial or amendment notice

- (1) The secured creditor or grantor may register a cancellation notice where the—
  - (a) registration of an initial notice or the amendment notice was done in error or through fraud;
  - (b) registration of the initial notice or amendment notice was not authorised by the grantor;
  - (c) collateral is no longer subject to the security interest; or
  - (d) security interest to which the notice relates has been extinguished and the secured creditor has no further commitment to provide value to the grantor.
- (2) Notwithstanding subsection (1), the Registrar may cancel notices filed under this Act where—
  - (a) the duration in [section 23](#) lapses without the notice being amended;
  - (b) the transaction creating security interest rights between the grantor and the secured creditor contravenes the provisions of the Tier 4 Microfinance Institutions and Money Lender's Act or any other law;
  - (c) there is a mistake or error in the description of the collateral;
  - (d) there is wrong description of the collateral;
  - (e) the collateral is destroyed or is no longer in existence; or
  - (f) the registrar is ordered by court to cancel the notice.
- (3) The bureau shall, before cancelling the registration of the initial notice or amendment notice, give notice to the secured creditor or grantor as the case may be.

- (4) Notwithstanding subsection (1) (d), where a grantor has met its obligations to the secured entity, the grantor or secured creditor shall file a discharge notice with the registrar.
- (5) A person aggrieved by a decision of the bureau to cancel an initial notice or an amendment notice may appeal to the High Court.

## **25. Notice of objection**

- (1) A person who believes that a notice is inaccurate or was wrongfully registered, may register a notice of objection to the notice, as may be prescribed by regulations made under this Act.
- (2) The registration of a notice of objection does not affect the perfection of a notice.
- (3) Where a notice of objection is registered under subsection (1), and the secured creditor fails to respond, in part or wholly, to the notice, the person who registers the notice shall make an application for cancellation of the initial notice to the registrar.

## **26. Notice of discharge**

- (1) A secured creditor shall, within five working days after the obligation secured by the collateral has been paid or performed in full, discharge a security interest and file a discharge notice.
- (2) Where the secured creditor does not, within the time prescribed in subsection (1) file a discharge notice, the grantor may apply to the registrar to discharge the initial notice or amendment notice.

## **27. Search of register**

- (1) The register shall be made available to the public for search electronically, at a fee, as may be prescribed.
- (2) Where requested, the registrar shall issue a certified report of the results of a search of the register, at a fee, as may be prescribed.
- (3) A certified report issued by the registrar under subsection (2) shall be admissible as evidence in any proceedings without any further or other proof of its authenticity.

## **28. Integrity and security of register**

- (1) The registrar shall upon the expiry of a notice, remove the notice from the register.
- (2) Except as provided for under this Act, the registrar shall not remove from, or amend any information in the register.
- (3) The registrar shall archive the notice removed from the register under subsection (1), for ten years.

## **29. Limitation on liability of the registrar**

The registrar or an officer acting under the authority of the registrar shall not be liable for any action or omission done pursuant to this Act.

# **Part V – Priority of security interests and competing claims**

## **30. Priority of security interest in same collateral**

Priority between security interests in the same collateral shall be determined as follows—

- (a) a perfected security interest shall have priority over an unperfected security interest;

- (b) priority between perfected security interests shall be determined by the order of whichever of the following actions first occurs—
  - (i) the registration of an initial notice;
  - (ii) the secured creditor, or another person on the secured creditor's behalf, taking possession of the collateral; or
  - (iii) the secured creditor, or another person on the secured creditor's behalf acquiring control of the collateral; and
- (c) priority between unperfected security interests in the same collateral shall be determined by the order of creation of the security interests.

### **31. Competing security interests created by different grantors**

A security interest created by a grantor is subordinate to an earlier created security interest in the same collateral.

### **32. Change in means of perfection not to affect priority**

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

### **33. Priority of security interest in future obligations and property acquired after registration**

- (1) The priority of a security interest extends to all obligations secured by the security interest including the obligations that are incurred after the security interest is perfected.
- (2) The priority of a security interest covers all the collateral described in the register whether the collateral was acquired by the grantor or come into existence before or after the registration of the notice.

### **34. Priority of security interest in proceeds**

The priority of a security interest in the collateral shall also be the priority with respect to proceeds arising from dealing in the collateral.

### **35. Priority of security interest in commingled goods**

- (1) Where a tangible asset which becomes part of a product or mass, had two or more competing security interests, the order of priority of the competing security interests in the product or mass is the same as the order of priority that the security interests had in the tangible asset immediately before the tangible asset becomes part of the product or mass.
- (2) Where two or more security interests are perfected in one tangible asset before it becomes part of a product or mass, the competing security interests rank in proportion to the value of the product or mass at the time the tangible asset becomes part of the product or mass.
- (3) Where more than one security interest extends to commingled goods, a security interest perfected before the goods become commingled has priority over a security interest that is perfected at time the collateral becomes commingled goods.
- (4) Where more than one security interest in commingled goods is perfected before the security interest become commingled goods, the security interest shall rank equally in proportion to the value of the collateral at the time it became commingled goods.



### 36. Priority of security interest in accessions

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

### 37. Priority of security interest in fixtures

- (1) A security interest taken in a tangible asset that becomes a fixture, shall continue in the tangible asset after the tangible asset is affixed to the immovable property.
- (2) A perfected security interest in a tangible asset that becomes a fixture under this Act has priority over a competing interest in immovable property created and perfected under the Land Act, [Cap. 227](#) and the Mortgage Act, 2009.

### 38. Priority of security interest in crops

- (1) A security interest in growing crops or in crops to be grown, which is perfected and the grantor is in legal possession of the land where the crops are, has priority over the interest of the owner of the land or the mortgagee of the land.
- (2) A security interest in crops or in the proceeds of the crops, given for value to enable the grantor to produce or harvest the crops, and given while the crops are growing or within a period of six months, before the crops are planted, has priority over any other security interest in the same collateral given by the same grantor.
- (3) The rights of a judgment creditor who causes land where crops that have an unperfected security interest to be seized in order to enforce a court judgment take priority over an unperfected security interest in the crops.

### 39. Rights of purchasers and other transferees

- (1) A purchaser, transferee, lessee, and licensee of collateral that is subject to a perfected security interest acquires rights in the collateral which is subject to the security interest, except where—
  - (a) the purchaser, transferee, lessee, or licensee, as the case may be, acquires the rights free of the security interest and the secured creditor authorizes the sale or other transfer to be free of the security interest;
  - (b) the lessee or licensee, as the case may be, acquires the rights free of a security interest and the secured creditor authorizes the lease or license to be free of the security interest;
  - (c) a purchaser of the collateral, where the collateral is sold in the ordinary course of the business of the seller acquires the right free of the security interest, where at the time of the purchase, the buyer does not have knowledge that the sale violates the rights of the secured creditor under the security agreement; or
  - (d) the rights of a lessee or licensee of collateral where the collateral is leased or licensed in the ordinary course of the business of the lessor or licensee are not affected by the security interest, where at the time of the lease or license, the lessee or licensee does not have knowledge that the lease or license violates the rights of the secured creditor under the security agreement.
- (2) Where collateral is subject to a security interest that is not perfected—
  - (a) a court or a liquidator of an insolvent person that takes physical custody or control of the collateral takes the collateral free of an unperfected security interest;
  - (b) a purchaser or lessee who acquires goods for value and receives possession of the goods takes the goods free of an unperfected security interest; and

- (c) a lien holder who takes control of collateral or causes collateral to be seized takes the collateral free of an unperfected security interest.
- (3) 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 or through barter;
  - (b) a person sales, transfers, leases or licenses goods in the ordinary course of business if it is the business of that person to sale, transfer, lease or license goods of that kind or nature.

#### **40. Priority over unperfected security interest**

Where collateral is subject to a security interest that is not perfected, a person who takes possession or control of the collateral without knowledge of the security interest, takes the collateral free of an unperfected security interest.

#### **41. Acquisition security interest**

- (1) An acquisition security interest has priority over a competing non-acquisition security interest that is created by the grantor.
- (2) In this Act, "an acquisition security interest" means a security interest in a tangible asset or in intellectual property or the rights of a licensee under a licence of intellectual property, created by a person who provides credit to the grantor which secures an obligation to pay any unpaid portion of the purchase price of an asset or other credit extended to enable the grantor to acquire a tangible asset or rights in an asset to the extent that the credit is used for that purpose.

#### **42. Security interest in negotiable instruments**

- (1) A security interest in a negotiable instrument that is perfected by possession of the negotiable instrument has priority over a security interest in the negotiable instrument that is perfected by registration of a notice in the register.
- (2) A purchaser of a negotiable instrument has priority over the security interest of a secured creditor in the negotiable instrument where, in the ordinary course of the business of the purchaser—
  - (a) the purchaser gives value;
  - (b) the purchaser takes possession of the negotiable instrument; and
  - (c) the purchaser does not have knowledge that the sale is in violation of the rights of the secured creditor under the security agreement.

### **Part VI – Enforcement of security interest**

#### **43. Debtor and grantor not to waive rights before default**

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

#### **44. Rights of secured creditor upon default**

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

- (2) Where a grantor defaults to perform a secured obligation, the secured creditor may enforce the security interest by exercising any right—
  - (a) under this Act;
  - (b) provided in the security agreement; or
  - (c) provided under any other written law.
- (3) Where a debtor defaults to perform a secured obligation, the secured creditor shall serve on the grantor a notification, in writing or in other form agreed between the parties, to pay the money owing or perform and observe the agreement as the case may be.
- (4) The notification shall state the following matters—
  - (a) the nature and extent of default;
  - (b) if the default consists of non-payment, the actual amount and the time by the end of which payment must be completed;
  - (c) if the default consists of the failure to perform or observe any covenant, express or implied, in the agreement, the act the grantor must do or desist from doing, so as to rectify the default and the time by the end of which the default must have been rectified; and
  - (d) the consequence that if the default is not rectified within the time specified in the notification, the secured creditor will proceed to exercise any of the remedies available under any law.
- (5) Where the debtor does not remedy the default within the time period indicated in the notification, the secured creditor may—
  - (a) in case of a security interest perfected by registration, register a default and enforcement notice with the registrar; and
  - (b) in the case of a security interest perfected other than by registration, take any action as empowered under this Act.

#### **45. Right of secured creditor with priority to enforce a security interest**

Where the enforcement of a security interest is commenced by a secured creditor other than the secured creditor whose right has priority over that of the enforcing creditor, the secured creditor shall be entitled to take over the enforcement at any time before the sale of the collateral.

#### **46. Actions permissible without judicial process**

- (1) Upon default, a secured creditor with a security interest in accounts receivable may instruct the account debtor to make payment to the secured creditor, and shall apply such payment to the satisfaction of the obligation secured by the security interest after deducting the collection expenses of the secured creditor.
- (2) Upon default, a secured creditor with a security interest in a document of title that is perfected by possession may proceed in respect of the goods covered by the document of title.
- (3) Upon default by an account debtor, where the security interest is in a deposit account—
  - (a) where the deposit account is maintained by a financial institution and the security interest is perfected in the deposit account the financial institution may apply the balance of the deposit account to the obligation secured by the deposit account; and
  - (b) where a secured creditor has a security interest in the deposit account perfected by a control agreement, the secured creditor may instruct the financial institution to pay the balance of the deposit account to the account of the secured creditor.

- (4) The secured creditor may act under this section without an order of court.
- (5) In this section—
  - "account debtor" means a person who is liable for payment on an account receivable, and includes a guarantor or other person with secondary liability for payment on the account receivable;
  - "control agreement" means an agreement between a financial institution, a grantor and a secured creditor, in which the financial institution agrees to follow the instructions of the secured creditor without the further consent of the debtor.

#### **47. Expedited possession by secured party**

- (1) In cases not covered by [section 46](#), and subject to the rights of a person with priority in the possession of a collateral, including a lessee or licensee, the secured creditor is entitled to take possession of the collateral after default, with or without a court order.
- (2) For the purposes of subsection (1), a secured creditor may take possession of a collateral without a court order where—
  - (a) the grantor, in writing, consents to the secured creditor taking possession of the collateral without a court order;
  - (b) the secured creditor gives a notice of default and a notice to take possession by the secured creditor, to the grantor or the person in possession of the collateral, where the collateral is not with the grantor; and
  - (c) possession or control of the collateral can be taken without a breach of the peace.
- (3) "Breach of the peace" in subsection (2) means—
  - (a) entering the premises of the grantor without permission; or
  - (b) being physically violent or intimidating the grantor.
- (4) Subsections (1), (2) and (3) shall not apply to a secured transaction with a contractual value not exceeding five hundred currency points.
- (5) Where the collateral is a fixture, the secured creditor may remove the collateral from the immovable property to which it is fixed without court process where the owner and, if the immovable property is subject to a mortgage, the mortgagee, agree in writing.

#### **48. Sale by secured creditor**

- (1) Save as provided for under [section 46](#), where a debtor is in default, a secured creditor may sell any or all of the collateral in its condition or following any commercially reasonable preparation or processing.
- (2) The sale of the collateral shall be by auction.

#### **49. Notice of disposition of collateral**

- (1) A secured creditor shall, at least ten working days before disposing of a collateral, give notice to grantor, any other secured creditor, owner of the collateral or any other person as it deems fit and file with the registrar, a disposal notice.
- (2) A notice of disposition shall—
  - (a) indicate the grantor and the secured creditor;
  - (b) describe the collateral;

- (c) indicate the amount required to satisfy the secured obligation including the interest due and the expenses incurred; and
  - (d) state the time and place of the public sale.
- (3) A person may, within five days of receipt of a notice referred to in subsection (1), object to the disposition of the collateral.
- (4) The objection shall be in the prescribed form and shall state the grounds of objection.
- (5) The registrar shall upon receipt of the objection, notify the secured creditor and suspend the disposition of the collateral until the objection is withdrawn or lapsed.
- (6) The objection lodged in subsection (3) shall lapse after forty five days from the date of objection unless the person who objected it has within that time, commenced proceedings in a court of competent jurisdiction and has obtained and served on the registrar an injunction or court order restraining the registrar from removing the objection from the register.
- (7) Any dealing in collateral shall not have effect if the same is carried out before the objection lapses or is withdrawn.
- (8) Subsection (1) shall not apply where—
  - (a) the collateral is perishable: or
  - (b) the secured creditor reasonably believes that the collateral shall decline substantially in value if it is not disposed of immediately.
- (9) The grantor may waive the right to be notified after default.
- (10) The Minister shall by statutory instrument prescribe the procedures for disposing of perishable collateral.

## 50. Notice and claim for distribution

- (1) A secured creditor shall at least ten working days before the distribution of the proceeds of sale or disposal, give notice of the proposed distribution to the persons specified in [section 49](#) (1).
- (2) The notice shall include—
  - (a) the earliest date on which the distribution may occur;
  - (b) the date on which persons who are given notice of the proposed distribution as required under subsection (1), may present claims on the proceeds of sale which are to be distributed;
  - (c) the address to which the claims made under paragraph (b) are to be presented; and
  - (d) the type of proof of the claim to be provided.
- (3) The persons listed in [section 49](#)(1) shall within five working days from the receipt of the notice provide the secured creditor with—
  - (a) an authenticated claim of the interest: or
  - (b) a notice of claim of interest in the collateral from a lien holder.

## 51. Application of proceeds

- (1) A secured creditor who disposes of collateral shall apply the proceeds of the disposition 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 and professional fees incurred by the secured creditor;

- (b) payment for the satisfaction of obligations secured by a security interest that has priority claim in the collateral or lien;
  - (c) payment for the satisfaction of the obligation secured by the security interest of the enforcing secured creditor; and
  - (d) payment for the satisfaction of the obligations secured by any subordinate security interest or lien in the collateral where written demand and proof of the interest are received before the distribution of the proceeds is completed.
- (2) A secured creditor or lien holder who enforces the distribution of the proceeds of a disposition may after deduction of the payments specified in subsection (1), pay the surplus of the proceeds to a court for distribution to the other claimants.
- (3) The secured creditor shall account to the grantor or owner of the collateral for the surplus of the proceeds, if any.

## **52. Statement of account**

- (1) A secured creditor shall, within ten working days after the disposal of the collateral, provide a written statement of account, to the grantor, owner, any other secured creditor or person with interest in the collateral.
- (2) The statement of account shall indicate—
  - (a) the amount of the gross proceeds of the disposal;
  - (b) the amount of the costs and expenses of enforcement and disposition; and
  - (c) the balance owing by the secured creditor to the debtor, or by the debtor to the secured creditor as the case may be.

## **53. 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 creditor fails to comply with the requirements of this Part where a purchaser—
  - (i) has no knowledge of any defects in the sale;
  - (ii) does not buy in collusion with the secured creditor, other bidders or the person conducting the sale; and
  - (iii) the purchaser acts in good faith.

## **54. Redeeming collateral**

- (1) The grantor, a person with a right in the collateral, or the debtor, is entitled to terminate the enforcement process and redeem the collateral by—
  - (a) tendering performance of the obligations secured by the collateral; or
  - (b) paying the expenses that were incurred to seize, hold, repair and prepare the collateral for disposition.
- (2) A collateral may be redeemed where the secured creditor has not yet sold or disposed it of.

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

## **55. Rights acquired in collateral**

- (1) Where a secured creditor sells or otherwise disposes of the collateral in accordance with the provisions of this Part, the buyer or transferee of the collateral acquires the rights of the grantor in the collateral free of the rights of the enforcing secured creditor and any competing claimant.
- (2) Where a secured creditor leases or licenses the collateral, the lessee or licensee is entitled to the benefit of the lease or license during its term.

## **56. Noncompliance with Part by secured creditor**

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

# **Part VII – General**

## **57. Administrative penalties**

- (1) The Registrar General may, impose an administrative penalty on a person that does not comply with this Act as may be prescribed by regulations.
- (2) Where a person fails to pay an administrative penalty imposed under subsection (1), the Registrar General may, by way of civil action in a competent court, recover the amount of the administrative penalty from such person as an amount due and owing to the bureau.

## **58. Offences**

- (1) A person who files a notice with fraudulent, frivolous or malicious intent commits an offence and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding two hundred currency points or both.
- (2) A person who for the purpose of deceiving the Registrar General or an officer of the bureau in the execution of this Act, makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, commits an offence and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding two hundred currency points or both.
- (3) A person who, makes a false statement or a misrepresentation, whether orally or in writing, for the purpose of procuring or influencing the doing or omitting the doing of anything in relation to this Act and who, on becoming aware of the false statement or misrepresentation, fails to inform the Registrar General commits an offence and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding two hundred currency points or both.

## **59. Regulations**

- (1) The Minister may, by statutory instrument, make regulations for, or with respect to any matter under this Act that is necessary for giving effect to the provisions of this Act.
- (2) Without limiting the generality of subsection (1), regulations made under this section may—
- (a) provide for the procedure for registration of notices, liens and any other matters related to the register;
  - (b) provide for the format of notices;
  - (c) provide for the procedure and requirements for conducting a search of the register;

- (d) prescribe the fees to be paid under this Act;
- (e) prescribe the administrative penalties payable under this Act; and
- (f) prescribe anything required to be prescribed under this Act.

## 60. Repeal and savings

- (1) The Chattels Securities Act, Act [No. 7 of 2014](#) is repealed.
- (2) A prior security interest that was perfected or made effective against third parties under any other law shall, after the commencement of this Act, remain perfected under this Act, in accordance with subsection (3).
- (3) A prior security interest shall remain perfected or effective against a third party and shall be deemed to be perfected under this Act until—
  - (a) the time it would have ceased to be perfected or effective against third parties under any other law; or
  - (b) the expiration of a period of one hundred and fifty calendar days after the effective date of this Act.
- (4) If a secured creditor satisfies the requirements of this Act for perfection of security interests before the perfection or its effect against third parties would have ceased in accordance with subsection (3), the perfection shall be deemed to be continuous.
- (5) A prior security interest that is not perfected under this Act within the period specified in subsection (3), shall be deemed to be an unperfected security interest thereafter.