

**MOVABLE PROPERTY (SECURITY INTERESTS) ACT, 2022**

**No. 5**



**of 2022**

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**An Act to provide for the facilitation of the use of movable property as collateral for credit facilities; for the establishment of the Collateral Registry Office and the Collateral Registry; for a comprehensive registration regime of security interests in movable property; for determination of priority between security interests in movable property; and for matters incidental thereto or connected thereto.**

*Date of Assent:* 25.02.2022

*Date of Commencement:* ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

**1.** This Act may be cited as the Movable Property (Security Interests) Act, 2022, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and  
commencement

## Interpretation

2. In this Act, unless the context otherwise requires —
- “account debtor” means a person who is obligated under an account receivable, and includes a guarantor or other person secondarily liable for payment of the account receivable;
- “acquisition security interest” means —
- (a) a security interest in a tangible asset or intellectual property, which secures an obligation to pay any unpaid portion of the purchase price of the tangible asset or intellectual property, or other credit extended to enable a debtor to acquire a right in such tangible asset or intellectual property to the extent that the credit is used for that purpose;
  - (b) the security interest of a lessor of a tangible asset under a lease for a term of one year or more; or
  - (c) the security interest of a consignor who delivers a tangible asset to a consignee under a commercial consignment, but does not include a sale and lease-back to the seller;
- “agricultural produce” means tangible assets of a debtor engaged in farming, and includes —
- (a) crops or horticulture produce, whether future, growing, or severed from land, and after severance whether subjected to any treatment or manufacture;
  - (b) timber, both standing and growing;
  - (c) livestock, bees and poultry, and the produce and progeny thereof;
  - (d) game farming;
  - (e) aquatic assets produced in aquaculture operations;
  - (f) seeds, fertiliser and manure; and
  - (g) any other agricultural and horticultural produce, whether subjected to any treatment or process of manufacture;
- “amendment notice” means a notice submitted to the Registry in the prescribed form to modify information contained in the related notice;
- “as-extracted collateral” means any —
- (a) minerals or petroleum that are subject to a security interest that is created by a debtor having an interest in the minerals or petroleum before extraction, and that attached to the minerals or petroleum as they are extracted; or
  - (b) payment obligations arising out of a sale, at a mine-head or wellhead, of minerals or petroleum in which the debtor had interest before extraction;
- “cancellation notice” means a notice submitted to the Registry in the prescribed form to cancel the effectiveness of the registration of all related registered notices;
- “collateral” means —
- (a) a movable property that is subject to a security interest; or
  - (b) an account receivable that is subject to an outright transfer by agreement;

“commercial consignment” means a consignment where —

- (a) a consignor has reserved a security interest in a tangible asset that the consignor has delivered to the consignee for the purpose of sale, lease or other disposition; or
- (b) both the consignor and the consignee deal in the ordinary course of business in the assets of that description, but does not include an agreement under which assets are delivered to an auctioneer for the purpose of sale;

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

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

Cap. 42:02

“consumer goods” means goods that are used or acquired for use primarily for personal, domestic or household purposes, but does not include a serial-numbered vehicle;

“control agreement” means an agreement in writing among a deposit-taking institution, a secured creditor and a debtor, pursuant to which the deposit-taking institution agrees to follow instructions from the secured creditor with respect to the payment of funds credited to the deposit account without the further consent of the debtor;

“debtor” means a —

- (a) person that creates a security interest to secure its own obligation or that of another person;
- (b) transferor in an outright transfer of an account receivable; or
- (c) buyer or other transferee, lessee or licensee of a collateral that acquires its right subject to a security interest;

“deposit account” means a demand, savings or similar account maintained by a deposit-taking institution;

“deposit-taking institution” means a financial institution that is authorised to accept deposits under the Banking Act;

Cap. 46:04

“equipment” means a tangible asset, other than inventory or consumer goods, that is primarily used or intended to be used by a debtor in the operation of its business;

“finance lease” means a lease of a tangible asset where the —

- (a) lessee automatically becomes the owner of the asset that is the object of the lease;
- (b) lessee may acquire ownership of the asset by paying no more than a nominal price; or
- (c) asset has no more than a nominal residual value;

“fixture” means a tangible asset that, despite the fact that it is physically affixed to immovable property, is treated as movable property;

“funds proceeds” means proceeds in the form of money, accounts receivable, negotiable instruments or funds credited to a deposit account;

“Government lien” means a tax or lien issued by the Government of Botswana;

“hire purchase agreement” means any agreement whereby goods are sold subject to the condition that the ownership in such goods shall not pass merely by the transfer of the possession of such goods, and the purchase price is to be paid in instalments, two or more of which are payable after such transfer; and includes any other agreement which has, or agreements which together have, the same import, whatever form such agreement or agreements may take:

Provided that any agreement which, or agreements which together, provide for the letting and hiring of goods —

(a) with the right to purchase such goods only after two or after more than two instalments subsequent to such transfer have been paid in respect of the goods; or

(b) with the right, after two or after more than two instalments subsequent to such transfer have been paid in respect of the goods, to continue or renew from time to time such letting and hiring at a nominal rental, or to continue or renew from time to time the right to be in possession of the goods, without any further payment or against payment of a nominal periodical or other amount,

shall, whether or not the agreement or agreements may at any time be terminated by either party or one of the parties, be deemed, for the purposes of this Act, to be of the said import;

“initial notice” means a notice submitted to the Registry in the prescribed form to perfect the security interest to which the notice relates;

“instalment sale agreement” means any agreement of purchase and sale whereby ownership in the goods sold passes upon delivery, and the purchase price is to be paid in instalments, two or more of which are payable after delivery, and under which the seller would be entitled to the return of the goods sold if the buyer fails to comply with any one or more provisions of the agreement; and includes any other agreement which has, or agreements which together have, the same import, whatever form such agreement or agreements may take;

“intangible asset” includes account receivable, deposit account, securities, negotiable instrument, negotiable document and intellectual property right, in an electronic form;

- “intellectual property” means –
- (a) any copyrights and related rights, as defined in the Copyright and Neighbouring Rights Act; Cap. 68:02
  - (b) a mark, patent and industrial design, as defined in the Industrial Property Act; Cap. 68:03
  - (c) a business name, as defined in the Registration of Business Names Act; or Cap. 42:05
  - (d) any other related right;
- “inventory” means any tangible assets that are held by the debtor for sale or lease in the ordinary course of business, including raw materials or work-in-progress, and includes materials used or consumed in a business;
- “mass” means a tangible asset which results when one tangible asset is so commingled with one or more tangible asset that they have lost their separate identities;
- “money” means bank notes and coins issued by the Bank of Botswana and notes and coins authorised as legal tender by any other country;
- “movable property” means any tangible or intangible asset, other than immovable property;
- “negotiable document” means a document of title, or a receipt such as a bill of lading or warehouse receipt, that embodies a right to delivery of a tangible asset and satisfies the requirement of negotiability under the law governing the document;
- “negotiable instrument” means a bill of exchange, cheque or promissory note;
- “non-consensual creditor” means a creditor that has obtained a right in collateral by operation of any law, including an order of a court or as a result of owed taxes and similar fees;
- “notice” means an initial notice, an amendment notice or a cancellation notice;
- “perfected security interest” means a security interest that has become effective against third parties by registration of a notice, possession of a tangible asset, the execution of a control agreement or temporarily perfected, as provided in this Act;
- “possession”, in relation to a secured creditor, means actual possession or control of tangible collateral by the secured creditor or such secured creditor’s agent;
- “priority” means the right of a person in collateral in preference to the right of a competing claimant;
- “proceeds” means identifiable or traceable movable property received as a result of sale, or other disposition, collection, lease or license of the collateral, revenues, dividends, distributions, insurance proceeds and claims arising from defects in, damage to, or loss of, the collateral or other disposition of the collateral, and includes proceeds derived from the sale, or other disposition, collection, lease or license;

- “registrant” means a person who submits the prescribed Registry notice form to the Collateral Registry Office;
- “registration number” means the unique number assigned to an initial notice by the Registry and permanently associated with that notice and any related notice;
- “Registry” means the Collateral Registry established under section 9;
- “Registry records” means the information in all registered notices stored by the Collateral Registry Office, consisting of all the records that are publicly accessible and the records that have been archived;
- “secured creditor” means a —
- (a) person in whose favour a security interest is created; and
  - (b) transferee under an outright transfer of an account receivable;
- “secured obligation” means an obligation secured by a security interest;
- “security” means a share or other interest in the property or enterprise of a citizen or foreign issuer;
- “security agreement” means an agreement —
- (a) between a debtor and secured creditor that creates or provides for a security interest, regardless of whether the parties have denominated it as a security agreement; and
  - (b) that provides for an outright transfer of an account receivable;
- “security interest” means —
- (a) a property right in movable property that is created by agreement to secure payment or other performance of an obligation, regardless of whether the parties have denominated it as a security interest, and regardless of the type of asset, the status of a debtor or secured creditor or the nature of the secured obligation; and
  - (b) the right of the transferee in an outright transfer of an account receivable;
- “serial number” means the serial number located on the chassis or body frame of a motor vehicle or trailer;
- “serial-numbered vehicle” means a motor vehicle or trailer identifiable by a serial number;
- “tangible asset” means every form of tangible movable property, including money, inventory, equipment, consumer goods, accessions, fixtures, negotiable instruments and negotiable documents in paper form;
- “trust indenture” means any deed or document, however designated, in terms of which a person issues or guarantees, or provides for the issue or guarantee of, a debt obligation secured by a security interest and in which a person is appointed as trustee for the holder of the debt obligation issued, guaranteed or provided for under it;
- “trust receipt” includes an acknowledgement of a debtor in writing, to deal with collateral for the benefit of a secured creditor;



“value” means any consideration that is sufficient to support a simple contract, and includes antecedent debt or liability and a binding commitment to provide future value; and

“working day” means any day other than Saturday, Sunday or any day which is a public holiday under the Public Holidays Act.

Cap. 03:07

Application  
of Act

**3.** (1) Except as otherwise provided in this Act, this Act applies to a security right in a movable property, including —

- (a) every transaction that creates a security interest, without regard to the —
  - (i) form of the transaction,
  - (ii) type of the movable property,
  - (iii) status of the debtor or secured creditor,
  - (iv) person who holds title to the collateral, or
  - (v) nature of the secured obligation;
- (b) the transfer of accounts receivable, even though such transfer may not secure payment or performance of an obligation;
- (c) the lease of a tangible asset for a term of more than one year, even though such lease may not secure payment or performance of an obligation;
- (d) a commercial consignment, even though the arrangement may not secure payment or performance of an obligation;
- (e) a security interest created by judgement of a court in accordance with the Rules of the High Court or by operation of law; and
- (f) a security interest created by a Government lien.

Cap. 04:02  
(Sub. Leg.)

(2) Without limiting the generality of subsection (1), this Act applies to —

- (a) a floating or fixed charge;
- (b) a hypothec;
- (c) a hire purchase agreement or instalment sale agreement;
- (d) a conditional sale agreement;
- (e) an agreement with a retention of title provision;
- (f) a finance lease;
- (g) a sale and lease-back;
- (h) a trust indenture and trust receipt; and
- (i) a pledge.

(3) This Act does not apply to —

- (a) the creation or transfer of an interest in immovable property, other than the transfer of a right to payment including a lease of immovable property, or a transfer of rental payment payable under a lease for land;
- (b) the sale of accounts receivable as part of a sale of a business out of which such sale arose, unless the seller remains in control of the business thereafter;
- (c) the transfer of accounts receivable that is made solely to facilitate the collection of the accounts for the transferor;
- (d) an assignment for the general benefit of creditors;

Cap. 71:01

Conflict of laws

- (e) a transfer, assignment or mortgage of an aircraft and aircraft engines as defined in the Civil Aviation Act;
- (f) a transfer, assignment or mortgage of a ship; or
- (g) property not liable to attachment in satisfaction of a judgment debt in a court of competent jurisdiction.

4. (1) The law that applies to the mutual rights and obligations of a secured creditor and debtor arising from a security agreement shall be the law chosen by the secured creditor and debtor, and in the absence of a choice of law, by the law governing the security agreement.

(2) Except as otherwise provided in this section, the law that applies to the creation, perfection and priority of a security interest in —

- (a) a tangible asset shall be the law of the country where the tangible asset is located; and
- (b) an intangible asset shall be the law of the country in which the debtor is located.

(3) The law that applies to the creation, perfection and priority of a security interest in a tangible asset that is of the type ordinarily used in more than one country, shall be the law of the country in which the debtor is located.

(4) The law that applies to any matter relating to the enforcement of a security interest shall be —

- (a) in the case of a tangible asset, the law of the country where the tangible asset is located at the time the relevant enforcement process takes place; and
- (b) in the case of an intangible asset, the law that applies to the priority of a security interest.

(5) For the purposes of this section, a debtor is located —

- (a) in the country in which the debtor has a place of business;
- (b) where the debtor has a place of business in more than one country, in the country in which the central administration of the debtor is exercised; or
- (c) where the debtor does not have a place of business, in the country in which the debtor has habitual residence.

(6) The location of a collateral for creation of a security interest shall be the location of the movable property at the time the security interest was created, and for purposes of perfection and determining of the priority of such security interest, the location of the collateral shall be determined at the time the dispute arises.

(7) Where a security interest in collateral is created and perfected before a change in the location of the collateral or debtor, the location of the collateral or debtor shall be, with respect to perfection and priority, the location prior to the change in location.

(8) Where a security interest is perfected under the law of another country and this Act becomes applicable as a result of a change in the location of the debtor or collateral, the security interest shall remain perfected in accordance with this Act until —

- (a) the time when perfection would have lapsed under the law of the other country; or
  - (b) 10 working days after the change in location, or only where perfection requirements under this Act are satisfied before the expiration of that time period.
- (9) The law that applies to the creation, perfection, priority and enforcement of a security interest in the right to funds credited to a deposit account shall be —
- (a) the law of the country in which a deposit-taking institution which maintains the deposit account has its place of business; or
  - (b) where a deposit-taking institution has a place of business in more than one country, the law of the country in which the office that maintains the account is located.

**5.** (1) A provision of this Act, except the provisions of sections 4(2) to (9), 5(2), 27, 28 and 87, may be derogated from or varied by agreement:

Party  
autonomy  
and standards  
of conduct

Provided that the agreement does not affect the right or obligation of any person that is not party to the agreement.

(2) A person shall exercise any right, duty or obligation that arises under a security agreement or this Act in good faith and in accordance with reasonable standards of commercial practice.

## PART II — *Collateral Registry Office and Collateral Registry*

**6.** (1) The Minister may, by Order published in the *Gazette*, designate a public body as a Collateral Registry Office which shall be responsible for the day-to-day administration of the Registry and any other related functions.

Collateral  
Registry  
Office

(2) For purposes of this section, “public body” means any office, organisation, establishment or body created by or under any enactment or under powers conferred by any enactment; or any organisation, trust, company or body where public moneys are used, and includes —

- (a) any Ministry or Department;
- (b) a local authority;
- (c) a land board;
- (d) a statutory body; and
- (e) a company registered under the Companies Act being a company in which the Government or an agency of the Government through holding of shares or otherwise, is in a position to direct the operations of that company.

Cap. 42:01

**7.** The Collateral Registry Office shall, as the Minister may prescribe, appoint a person to be an officer, who shall exercise and perform the functions, of the Collateral Registry Office under this Act.

Appointment  
of officers of  
Collateral  
Registry  
Office

## A.90

Functions of  
Collateral  
Registry Office

**8.** (1) The functions of the Collateral Registry Office shall be to –  
(a) manage and facilitate the electronic access by users of the Registry;  
(b) process fees;  
(c) oversee the operation and maintenance of the registration system;  
and  
(d) collect statistical data relating to the Registry.

(2) Notwithstanding subsection (1) the Collateral Registry Office may carry out any other functions under this Act or any other written law.

Collateral  
Registry

**9.** (1) There is established a Collateral Registry which shall be an electronic Registry.

(2) The function of the Registry shall be to receive, store and make accessible to the public, information on any registered notice with respect to a security interest and a right for non-consensual creditor.

Integrity of  
information  
in Registry

**10.** An officer of the Collateral Registry shall –

- (a) not, on his or her own motion, amend or delete information in the Registry records; and
- (b) preserve information contained in the Registry records and reconstruct the information in the event of loss or damage.

Public access  
to Registry  
records

**11.** The Collateral Registry Office shall be open to the public and any person may search the Registry electronically and obtain a copy of the search results in accordance with this Act and upon payment of such fee as may be prescribed.

Debtor's  
authorisation  
for registration

**12.** (1) A person who wishes to register an initial notice or amendment notice that either adds a collateral not included in a security agreement or adds a debtor shall be authorised to register the initial notice or amendment notice in writing by the debtor.

(2) A person may register an initial notice or amendment notice before or after the creation of a security interest or the conclusion of a security agreement to which the notice relates.

(3) Where a person registers an initial notice or amendment notice referred to under subsection (1) without the authorisation by a debtor, such registration shall not be enforceable.

(4) A written security agreement shall be sufficient to constitute authorisation by a debtor for the registration of an initial notice or amendment notice.

(5) The Collateral Registry Office –

- (a) shall not conduct any scrutiny of the information provided in a notice;
- (b) shall not be responsible for the accuracy of the legality of the information in a notice; and
- (c) may not require evidence of a written authorisation by the debtor to register an initial notice or amendment notice.

Single notice  
sufficient for  
multiple  
security  
agreements

**13.** A single initial notice registered in terms of this Act shall be sufficient for one or more than one security interest created by a debtor in favour of the same secured creditor arising out of any security agreement between the same parties.

- 14.** The Minister may prescribe the procedure for —
- (a) the registration of a notice;
  - (b) access to information by the public;
  - (c) the method for conducting a search of the Registry records;
  - (d) the assignment of a unique identification number to a debtor and a secured creditor; and
  - (e) the indexing of information.
- 15.** (1) A secured creditor who wishes to register an initial notice shall ensure that the initial notice contains the following information —
- (a) the identification number and address of the debtor;
  - (b) the identification number and address of the secured creditor or its representative;
  - (c) a description of the collateral in accordance with section 28;
  - (d) the period of effectiveness of the notice in accordance with section 18;
  - (e) a statement of the maximum amount for which the security interest may be enforced; and
  - (f) any other information as the Minister may prescribe.
- (2) A secured creditor shall, where an initial notice covers fixtures, timber to be cut or as-extracted collateral, include in the initial notice a reasonable description of where the fixtures, timber to be cut or as-extracted collateral is located.
- 16.** The registration of an initial notice or amendment notice shall be effective from the date and time the information in the initial notice or amendment notice is entered into the Registry and a registration number is assigned to it.
- 17.** (1) The Collateral Registry Office shall, immediately after the registration of an initial notice or amendment notice, provide electronically in such form as may be prescribed, proof of registration of the initial notice or amendment notice to the registrant.
- (2) The Collateral Registry Office shall ensure that the proof of registration referred to under subsection (1) contains information on the —
- (a) date and time when the registration became effective; and
  - (b) registration number.
- (3) A secured creditor shall, within 10 working days after receipt of the proof of registration referred to under subsection (1), submit a copy of such proof to the debtor.
- 18.** (1) A registered initial notice shall be valid for the period of time indicated by the registrant in the initial notice.
- (2) The period of validity of a registered initial notice may be —
- (a) extended within six months before the expiry of the period of time in the initial notice by the registration of an amendment notice that shall indicate a new period of validity; and
  - (b) extended more than once.

Procedure for registration, indexing of information, etc.

Information required for initial notice

Effect of registration

Obligation to provide proof of registration

Duration of registration of notice

## A.92

Registration of amendment or cancellation notice

(3) A registered amendment notice which extends a validity period of an initial notice shall be valid for the period specified in the amendment notice beginning from the expiry period of the initial notice.

**19.** (1) A secured creditor may, in such manner as may be prescribed, register an amendment or cancellation notice relating to an initial notice registered by the secured creditor.

(2) Where an amendment notice of a registered initial notice relates to the change of a secured creditor of the registered initial notice to another secured creditor, the new secured creditor may register an amendment or cancellation notice of such registered initial notice.

(3) The registration of an amendment or cancellation notice of a registered initial notice by a new secured creditor shall not be effective unless authorised by a secured creditor who registered the initial notice.

Compulsory registration of amendment or cancellation notice

**20.** (1) A secured creditor shall register an amendment notice of an initial notice if the —

(a) registered initial notice contains information that exceeds the scope of the debtor's authorisation to register such initial notice; or

(b) security agreement to which the initial notice relates has been revised to delete some of the collateral.

(2) A secured creditor shall register a cancellation notice of an initial notice if the —

(a) registration of the initial notice was not authorised by the debtor;

(b) debtor withdraws authorisation of the registration of the initial notice where a security agreement has not been concluded between the debtor and the secured creditor; or

(c) security interest to which the initial notice relates has been disposed of and the secured creditor has no further commitment to provide value to the debtor.

(3) The debtor may, in writing, where any of the conditions under subsection (1) or (2) are met, request the secured creditor to register an amendment notice or cancellation notice and the secured creditor shall —

(a) comply with the request within 10 working days after receipt of such request; and

(b) not charge or accept any fee for complying with the debtor's request.

(4) Where a secured creditor fails to comply with subsection (3) (a), a debtor may request the Collateral Registry Office to register an amendment notice or cancellation notice and the Collateral Registry Office shall, before registering the amendment notice or cancellation notice, notify the secured creditor.

(5) A person who is aggrieved by a decision of the Collateral Registry Office may appeal to a court of competent jurisdiction against the decision, within 30 working days after the date on which the person is notified of the decision.

**21.** (1) An error in the name and identification number of a debtor in an initial notice or amendment notice shall not render the initial notice or amendment notice ineffective if the information in such initial notice or amendment notice may be retrieved by a search of the Registry records using the debtor's correct name and identification number.

Error in  
required  
information  
by registrant

(2) An error in the name and identification number of the debtor shall not render the registration of the initial notice or amendment notice ineffective in respect to any other debtor correctly identified in such initial notice or amendment notice.

(3) An error in the information required for registering an initial notice or amendment notice other than the name and identification number of a debtor, shall not render the initial notice or amendment notice ineffective unless the error misleads a person.

(4) An error in the statistical information prescribed by the Minister shall not render the registration of an initial notice or amendment notice ineffective.

(5) An error in the description of a collateral shall not render ineffective the registration of an initial notice or amendment notice in respect to any other collateral correctly described in such initial notice or amendment notice.

(6) An error in the serial number of a vehicle that is not held as inventory shall render the registration of an initial notice or amendment notice in respect to the vehicle ineffective against a buyer or lessee of such vehicle.

**22.** (1) A secured creditor shall, where the identification of a debtor changes after an initial notice is registered, register an amendment notice indicating the new identification of the debtor within two months after the change and before the expiry of the period of the effectiveness of the initial notice.

Change in  
identification  
of debtor after  
registration

(2) Where a secured creditor registers an amendment notice in terms of subsection (1), a security interest to which the amendment notice relates shall –

- (a) remain effective against third parties; and
- (b) retain the priority it had over the right of a competing claimant before the change.

(3) Where a secured creditor registers an amendment notice after the expiration period of the time provided for under subsection (1), a –

- (a) security interest created by the transferee in respect to which an initial notice is registered after the transfer and before the registration of the amendment notice shall have priority over the security interest to which such amendment notice relates; and
- (b) person who purchases, leases or licenses a collateral after the change in the identification of a debtor and before registration of the amendment notice shall acquire the collateral right free of the security interest to which such amendment notice relates.

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Post-registration transfer of collateral

**23.** (1) Where a security interest has been perfected and a collateral is transferred to a transferee that acquires the collateral subject to the security interest, such security interest shall remain perfected and shall retain the priority it had over the right of competing claimants before the transfer:

Provided that a secured creditor shall register an amendment notice adding the transferee as the new debtor within 10 working days after the secured creditor becomes aware of the transfer and such transferee's identification.

(2) Where a secured creditor registers an amendment notice after the expiration of the period of the time provided under subsection (1), a —

- (a) security interest created by the transferee in respect to which an initial notice is registered after the transfer and before the registration of the amendment notice shall have priority over the security interest to which such amendment notice relates; and
- (b) person who purchases, leases or licenses the collateral after its transfer and before the registration of the amendment notice shall acquire a collateral right free of the security interest to which such amendment notice relates.

(3) Subsections (1) and (2) shall, where there are successive transfers of a collateral, apply to the last transfer.

Evidentiary provisions

**24.** A copy of, or extract from, a notice in the Registry which has been certified by the Collateral Registry Office to be a true copy or extract of the notice shall be —

- (a) admitted in any proceeding as of equal validity to the original document; and
- (b) conclusive evidence of the information stated in such notice.

Fraudulent notice

**25.** Any person who fraudulently files a notice commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding three years, or to both.

Submission of frivolous or malicious notice

**26.** A person who files a notice for registration with a frivolous, malicious or criminal purpose or intent commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding three years, or to both.

**PART III — Security Interests**

Creation of security interests

**27.** (1) A secured creditor shall create a security interest using a written security agreement and the security interest shall be effective between a debtor and the secured creditor in accordance with the terms of the security agreement.

(2) A security interest shall immediately become effective and enforceable between a debtor and a secured creditor upon creation if —

- (a) the debtor has a right in a collateral or the power to encumber the collateral;
- (b) there is a security agreement signed by a secured creditor and a debtor which —



- (i) reflects the intent of the parties to create a security interest,
- (ii) identifies a secured creditor and a debtor,
- (iii) describes a collateral as provided under section 28 or by a serial number for a serial-numbered vehicle that is not held as inventory,
- (iv) describes a secured obligation as provided in section 29, and
- (v) states the maximum amount for which the security interest may be enforced; and

(c) the value of a collateral has been given by the secured creditor.

(3) A security agreement shall not immediately become effective and enforceable in accordance with subsection (2) if a debtor and a secured creditor have agreed in a security agreement that a security interest shall become effective and enforceable at a later date and not upon creation, in which case the security interest shall be effective and enforceable at the date specified in the security agreement.

(4) A debtor and a secured creditor shall ensure that a security agreement contains a statement that the secured creditor has either, or through such secured creditor's agent, explained to the debtor, the effect of entering into the security agreement and that such debtor understands the explanation.

**28.** (1) A secured creditor may create a security interest in —

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

(2) A secured creditor shall describe a collateral secured or to be secured in a security agreement in a manner that reasonably allows for the identification of the collateral, and such description shall be sufficient if such collateral is described by —

- (a) the individual item, kind, type or the category of collateral;
- (b) a statement that a security interest is taken in all of a debtor's present and future movable property, where applicable, and excludes any specified item or kind of movable property as agreed by the debtor and the secured creditor; or
- (c) movable property or equipment of the debtor.

(3) A description of collateral shall be insufficient if a secured creditor describes the collateral as consumer goods without a specific description in accordance with subsection (2).

(4) A security agreement may provide for the creation of a security interest in the future movable property of a debtor and the security interest in the future movable property shall become effective only when the debtor acquires a right in the property or the power to encumber the movable property.

Provisions  
applicable  
to collateral

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Provisions applicable to obligations

**29.** (1) A secured obligation shall be described in a security agreement in a manner that reasonably allows for the identification of the secured obligation.

(2) A description of a secured obligation that indicates that a security interest secured an obligation owed to a secured creditor shall be sufficient.

Security interest in accounts receivable

**30.** (1) A security interest in account receivable shall be effective between a debtor and a secured creditor, and against the account debtor, notwithstanding that a security agreement exists limiting the debtor's right to transfer such debtor's right in the accounts receivable for the purpose of creating a security interest.

(2) Nothing contained under subsection (1) shall affect any obligation or liability of a debtor for breach of a security agreement prohibiting the use of the account receivable as collateral and the account debtor may not —

- (a) avoid a contract giving rise to the account receivable or the security agreement on the sole ground of a breach of such security agreement; or
- (b) raise against a secured creditor any claim the account debtor may have against the debtor as a result of the breach.

Continuation of security interest after transfer

**31.** A security interest shall, once created, continue as a collateral notwithstanding a sale, lease, license, exchange or other disposition of the collateral, unless otherwise agreed by a debtor and a secured creditor.

Continuation of security interest in proceeds

**32.** (1) Unless otherwise agreed by a debtor and a secured creditor, a security interest shall automatically extend to the proceeds of a collateral, whether or not a security agreement contains a description of the proceeds.

(2) Where the proceeds are funds credited to a deposit account or are commingled with other funds, the security interest —

- (a) shall extend to the commingled funds, notwithstanding that the proceeds have ceased to be identifiable;
- (b) in the commingled funds shall be limited to the amount of funds immediately before they were commingled; and
- (c) in the commingled funds shall be limited to the lowest amount between the time when the proceeds were commingled and the time when the security interest in the proceeds is claimed:

Provided that at any time after the comingling, the balance credited to the deposit account or the amount of money is less than the amount of the proceeds immediately before they were commingled.

Extinguishment of security interests

**33.** A security interest shall be extinguished when —

- (a) a secured obligation has been discharged; and
- (b) there is no outstanding commitment to extend additional credit secured by the security interest.

- 34.** (1) A security interest —
- (a) created in a tangible asset before becoming commingled in a mass shall continue in the mass; and
  - (b) that extends to a mass shall be limited to the same proportion of the mass as the quantity of a collateral bore to the quantity of the entire mass immediately after the commingling.
- (2) A security interest —
- (a) created in a tangible asset that is made into a product extends to the product; and
  - (b) that extends to a product,
- shall be limited to the value of a collateral immediately before it becomes part of the product.
- 35.** A security interest in a negotiable document shall extend to a tangible asset covered by the negotiable document:
- Provided that the issuer of such negotiable instrument is in possession of such tangible asset at the time the security interest in the negotiable document is created.
- 36.** A security interest in —
- (a) a tangible asset in respect to which intellectual property is used shall not extend to the intellectual property; and
  - (b) intellectual property shall not extend to the tangible asset.

Tangible assets commingled in mass or made into product

Tangible assets covered by negotiable documents

Tangible assets and intellectual property used

#### PART IV — *Perfection of Security Interests*

- 37.** (1) A secured creditor shall perfect a security interest when —
- (a) the security interest is created; and
  - (b) a notice in respect of the security interest is registered in the Registry.
- (2) A secured creditor shall perfect a security interest in a tangible asset once the secured creditor or a person acting on behalf of the secured creditor has possession of the collateral.
- (3) A secured creditor shall perfect a security interest in a right to payment of funds credited to a deposit account in accordance with section 43.
- 38.** (1) Where a secured creditor perfects a security interest in an asset, the secured creditor shall also perfect a security interest in the proceeds of the asset without any further act, and shall continuously be perfected:
- Provided that the proceeds shall be in the form of money, account receivable, negotiable document, negotiable instrument or deposit account.
- (2) Where a secured creditor perfects a security interest in an asset and the proceeds of the asset are in a form other than money, account receivable, negotiable document or negotiable instrument or right to payment of funds credited to a deposit account, the secured creditor shall also perfect a security interest in the proceeds using one of the means available to the relevant type of proceed within 21 working days after the proceeds arise.

Primary methods for perfection of security interests

Perfection of security interest in proceeds

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Perfection of security interest in mass or product	Perfection of security interest in negotiable documents and related tangible assets	Perfection of security interest in consumable goods	Perfection of security interest in money	Perfection of security interest in deposit accounts	Perfection of security interest in agricultural produce	Transfer of perfected security interests
	<p>(3) Where a secured creditor fails to perfect a security interest in terms of subsection (2) after the proceeds arise, the security interest in such proceeds shall be unperfected and ineffective against any claim by a third party.</p> <p><b>39.</b> Where a secured creditor perfects a security interest in a tangible asset, the secured creditor shall, without any further act, also perfect a security interest in a mass or product to which the security interest extends under section 34.</p> <p><b>40.</b> (1) A secured creditor may perfect a security interest in a negotiable document by —</p> <ul style="list-style-type: none"><li>(a) the registration of a notice with the Registry; or</li><li>(b) possession of the negotiable document.</li></ul> <p>(2) A perfected security interest in a negotiable document shall extend to a tangible asset covered by the negotiable document.</p> <p>(3) A security interest perfected by possession of a negotiable instrument shall remain perfected for a period of 10 working days after the negotiable document or a tangible asset covered by such negotiable document has been returned to a debtor or any other person acting on behalf of the debtor for the purpose of dealing with the tangible asset.</p>	<p><b>41.</b> A secured creditor shall perfect a security interest in consumer goods with an acquisition price that is below an amount to be prescribed.</p> <p><b>42.</b> A secured creditor may perfect a security interest in money by taking —</p> <ul style="list-style-type: none"><li>(a) possession of the money; or</li><li>(b) control of the deposit account,</li></ul> <p>except in the case of the funds proceeds under section 32 (2).</p> <p><b>43.</b> A secured creditor may perfect a security interest in funds credited to a deposit account —</p> <ul style="list-style-type: none"><li>(a) automatically upon the creation of the security interest, if the secured creditor is a deposit-taking institution that maintains the deposit account;</li><li>(b) upon conclusion of a control agreement; or</li><li>(c) upon the secured creditor becoming the deposit account holder.</li></ul>	<p><b>44.</b> (1) A secured creditor may perfect a security interest in agricultural produce that is stored, kept, growing or grown, as the case may be, on any land or premises.</p> <p>(2) A perfected security interest in agricultural produce under subsection (1) shall not be affected by a subsequent sale, lease, mortgage or other encumbrance of, or upon, the land on which the agricultural produce is stored, kept, growing or grown, as the case may be.</p> <p><b>45.</b> (1) Where a secured creditor transfers a security interest either in whole or in part, the secured creditor may register an amendment notice to reflect the transfer.</p>			

(2) The registration of a transfer of a security interest shall be effective on the date and time amendment notice is entered into the Registry.

**46.** Where a perfected security interest lapses, a secured creditor may re-establish the perfection of the security interest and such security interest shall be perfected from the time such perfection was re-established.

Lapses in perfection

**47.** (1) A secured creditor may change a method of perfection of a security interest.

Change in method of perfection of security interest

(2) A perfected security interest shall remain perfected:

Provided that the security interest is continuously perfected without any interruption of the perfection.

#### PART V — *Priority of Security Interests and Third Party Interests*

**48.** (1) Except as provided in this Part, the priority between security interests in the same collateral shall be determined as follows —

Priority of security interests in same collateral

(a) a perfected security interest shall have priority over an unperfected security interest in the same collateral;

(b) priority between two or more perfected security interests in the same collateral shall be determined by the order of the following actions, whichever occurs first —

- (i) the registration of a notice with the Registry,
- (ii) a secured creditor, or any other person acting on behalf of the secured creditor, taking possession of the collateral, except where the possession is a result of seizure or repossession,
- (iii) the secured creditor acquiring control of the collateral, or
- (iv) the temporary perfection of the security interest in accordance with this Act; and

(c) priority between unperfected security interests in the same collateral shall be determined by the order of the date of creation of the security interest.

(2) For the purposes of subsection (1), a security interest that is first perfected by using one method and later perfected in another method without interruption in perfection shall —

- (a) be deemed to be continuously perfected; and
- (b) retain its priority from the date of its original perfection.

**49.** Where a debtor transfers an interest in collateral which, at the time of the transfer, is subject to a perfected security interest, the perfected security interest shall have priority over any other security interest created by the transferee.

Priority of security interest transferred by debtor

**50.** Where a security interest in a collateral is perfected in terms of this Act, the priority of a security interest in the proceeds of the collateral shall be determined by using the same date used to determine the priority of the security interest in such collateral.

Priority of security interest in proceeds

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Competing security interests in mass or product

**51.** (1) Where two or more perfected security interests in the same tangible asset that subsequently becomes part of a mass or product continues in the mass or product, the priority of each security interest in such mass or product shall be the same as the priority that each security interest has in that tangible asset immediately before the tangible asset became part of the mass or product.

(2) Where more than one security interest extends to the same mass or product and each security interest was in a separate tangible asset at the time of commingling, the security interests shall rank in proportion to the value of a collateral at the time the collateral became commingled.

Priority of security interest in accessions

**52.** A security interest in a tangible asset that is created at the time when the tangible asset becomes an accession shall have priority over a claim to such tangible asset made by a person with an interest in the whole asset.

Priority of acquisition security interest in fixtures

**53.** (1) A secured creditor may create a security interest in a tangible asset that is a fixture and the security interest may continue in the tangible asset after such tangible asset becomes a fixture.

(2) An acquisition security interest in a fixture shall have priority against a third party which has an existing right in an immovable property:

Provided that a notice is registered by a secured creditor in the Registry before the third party acquires a right in the immovable property.

Competing acquisition security interests

**54.** An acquisition security interest of a seller or lessor shall have priority over a competing acquisition security interest of a secured creditor other than a seller or a lessor.

Acquisition security interests in proceeds

**55.** (1) A security interest in proceeds, in the case of an acquisition security interest, shall have the same priority as the acquisition security interest.

(2) A security interest in proceeds, in the case of an acquisition security interest in inventory, livestock or intellectual property, shall have the same priority as the acquisition security interest, except where the proceeds take the form of a receivable, negotiable instrument, or a right to payment of funds credited to a deposit account.

(3) The priority of a security interest in proceeds referred to in subsection (2) shall be subject to an acquisition secured creditor notifying a non-acquisition secured creditor with a security interest in the same kind of a tangible asset or an intangible asset as the proceeds that, before the proceeds were generated, the acquisition secured creditor registered a notice with the Registry.

Competing acquisition security interests in mass or product

**56.** A perfected acquisition security interest in a tangible asset that extends to a mass or product shall have priority over a non-acquisition security interest granted by the same debtor in the mass or product.

**57.** (1) An acquisition security interest in equipment shall have priority over a competing non-acquisition security interest created by a debtor in the same collateral:

Non-acquisition security interests competing with acquisition security interests

Provided that the acquisition security interest shall be perfected before the debtor obtains possession of the collateral.

(2) An acquisition security interest in inventory, livestock, intellectual property or any other movable property held by a debtor for sale or lease in the ordinary course of the debtor's business, shall have priority over a competing non-acquisition security interest created by such debtor in the same collateral:

Provided that the —

- (a) acquisition security interest is perfected by the registration of a notice in the Registry before the —
    - (i) debtor obtains possession of the inventory or livestock, or
    - (ii) agreement for sale of the intellectual property to the debtor is concluded; and
  - (b) acquisition secured creditor notifies the competing non-acquisition secured creditor that the secured creditor has or intends to obtain an acquisition security interest, and the notification describes the tangible asset or intangible asset to reasonably allow its identification.
- (3) A notification in accordance with subsection (2)(b) —
- (a) may cover acquisition security interests under multiple transactions between the same parties without the need to identify each transaction; and
  - (b) shall be sufficient only for security interest in inventory of which a debtor obtains possession not later than the expiry of 30 working days after notification is received.

**58.** (1) Except as otherwise provided in this Act, where a collateral is sold, transferred, leased or licensed and a security interest in the collateral is perfected, a buyer, transferee, lessee or licensee shall acquire a right over such collateral subject to the security interest.

Buyers or other transferees, lessees and licensees of collateral

(2) A buyer, transferee, lessee or licensee of a collateral shall acquire a right over the collateral free of a security interest where a secured creditor authorises the sale, transfer, leasing or licensing of such collateral free of the security interest.

(3) The right of a lessee or licensee under this section shall not be affected by a security interest if a secured creditor authorises a debtor to lease or license a collateral.

(4) A buyer of a tangible asset sold in the ordinary course of a seller's business shall acquire a right free of a security interest:

Provided that at the time of the conclusion of a sale agreement, the buyer did not have knowledge that the sale violates the right of a secured creditor under a security agreement.

(5) The right of a lessee of a tangible asset leased in the ordinary course of a lessor's business shall not be affected by a security interest: Provided that, at the time of the conclusion of the lease agreement, the lessee did not have knowledge that the lease violates the right of a secured creditor under a security agreement.

(6) The right of a non-exclusive licensee of an intangible asset licensed in the ordinary course of the licensee's business shall not be affected by a security interest: Provided that, at the time of the conclusion of the licence agreement, the licensee did not have knowledge that the licence violates the right of a secured creditor under a security agreement.

(7) Where a buyer or transferee of a tangible asset acquires a right over the tangible asset free of a security interest, a subsequent buyer or transferee shall acquire a right over such tangible asset free of the security interest.

(8) Where the right of a lessee of a tangible asset or a licensee of an intangible asset, is not affected by a security interest, the right of a sub-lessee or sub-licensee shall not be affected by the security interest.

(9) The right of a buyer or lessee over a tangible asset shall not be affected by an acquisition of a security interest in consumer goods unless —

- (a) the security interest is perfected by registration of an initial notice; or
- (b) a secured creditor takes possession before the buyer or lessee acquires a right in the tangible asset.

**59.** (1) A non-consensual creditor's right shall have priority over a security interest if, before the security interest is perfected, the non-consensual creditor has registered a notice with the Registry.

(2) Where a security interest is perfected before a non-consensual creditor registers a notice —

- (a) the security interest shall have priority over the right of the non-consensual creditor; and
- (b) such priority shall be limited to credit extended by a secured creditor —
  - (i) within 30 working days from the time the secured creditor received a notification from the non-consensual creditor that such non-consensual creditor has registered a notice with the Registry, or
  - (ii) pursuant to an irrevocable commitment to extend the credit, if the commitment is made before the non-consensual creditor notifies the secured creditor that such non-consensual creditor has registered an initial notice with the Registry.

(3) For purposes of this section, "irrevocable commitment" means an activity where a creditor has not yet extended a credit but has committed by means of an agreement to doing so.

Security interests competing with rights of non-consensual creditors



**60.** (1) A statutory lien on a tangible asset which secures a payment or performance of an obligation for a material or service delivered with respect to an asset that is subject to a security interest shall have priority over a security interest if the —

- (a) material or service relating to the statutory lien is delivered in the ordinary course of business;
- (b) holder of the possessory lien remains in possession of the asset; and
- (c) statutory lien is up to a reasonable value of the material or service delivered.

(2) For the purposes of this section “statutory lien” means the right in an asset arising by operation of another law, given to a person that has provided services or materials with respect to the asset by repairing the asset or improving such asset, to secure payment or performance for the services or materials provided.

**61.** (1) A person may, at any time, subordinate a priority of that person’s security interest under this Act, in favour of any other existing or future competing interest without the need for a beneficiary to be a party to the subordination.

(2) A subordination under subsection (1) shall not affect the right of a competing claimant other than the right of a person subordinating that person’s priority and a beneficiary of the subordination, if the competing claimant is party to such subordination.

(3) An agreement to subordinate a priority of a security interest shall be effective according to its terms between the parties and may be enforced by a third party if the third party is the person for whose benefit the agreement is intended.

**62.** (1) Subject to the right of a non-consensual creditor under section 59, a priority of a security interest shall extend to a secured obligation, including an obligation incurred after the security interest is perfected.

(2) The priority of a security interest shall cover every collateral described in a notice registered with the Registry, irrespective of whether the collateral is acquired by a debtor, or comes into existence before or after the time of registration.

**63.** The knowledge by a secured creditor of the existence of a security interest in favour of another person shall not affect the priority of the security interest under this Act.

**64.** (1) A security interest in a negotiable instrument or negotiable document that is perfected by possession of the negotiable instrument or negotiable document shall have priority over a security interest in a negotiable instrument or negotiable document that is perfected by registration of a notice in the Registry.

(2) A transferee of a negotiable instrument shall acquire a right free of a security interest perfected by the registration of an initial notice in the Registry if the transferee —

Priority of  
statutory liens

Subordination  
of priority

Future  
advances  
and future  
collaterals

Knowledge of  
security interest  
irrelevant

Negotiable  
instruments  
and negotiable  
documents

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- (a) qualifies as a holder in due course under the Bills of Exchange Act; or
  - (b) takes possession of the negotiable instrument without knowledge that the transaction is a breach of the right of a secured creditor under a security agreement.

Possession of money subject to security interest

**65.** A transferee who obtains possession of money that is subject to a security interest shall acquire a right free of the security interest, unless the transferee has knowledge that the transfer violates the right of a secured creditor under a security agreement.

Deposit accounts

**66.** (1) A security interest —

- (a) in a right to payment of funds credited to a deposit account; and
- (b) perfected by a secured creditor by becoming the account holder,

shall have priority over a competing security interest that is perfected by any other method.

(2) A security interest in a right to payment of funds, credited to a deposit account where a secured creditor is a deposit-taking institution, shall have priority over a competing security interest perfected by any other method, except where the secured creditor becomes the account holder.

(3) A security interest in a right to payment of funds credited to a deposit account perfected by a control agreement shall have priority over a competing security interest, except as provided in subsections (1) and (2).

(4) The order of priority among competing security interests in a right to payment of funds credited to a deposit account that are perfected by conclusion of a control agreement shall be determined on the basis of the time of the conclusion of the control agreement.

(5) A transferee of funds from a deposit account pursuant to a transfer initiated or authorised by a debtor shall acquire a right free of any security interest in the funds unless the transferee has knowledge that the transaction violates the right of a secured creditor under a security agreement.

Payment of debt through payment systems

**67.** A creditor who receives payment of a debt owing by a debtor through any payment system shall receive the payment free of a security interest, whether or not the creditor had knowledge of the security interest at the time of such payment.

Taking possession of securities

**68.** A transferee of unlisted securities who takes possession of certificated security and gives value without knowledge that the sale or any other transfer is in violation of the right of a secured creditor under a security agreement shall acquire a right free of a security interest.

### PART VI — *Enforcement of Security Interests*

Post-default rights

**69.** (1) A secured creditor and a debtor shall, after default, be entitled to exercise —

- (a) any right under this Part; and

(b) any other right provided in the security agreement or any other written law, except to the extent that such right is inconsistent with the provisions of this Act.

(2) The exercise of one post-default right by a secured creditor or a debtor shall not prevent the exercise of another post-default right by the secured creditor or debtor, except to the extent that the exercise of one right makes the exercise of another right impossible.

(3) A debtor may, before defaulting to pay a debt, not waive unilaterally or vary by agreement any of its right under this Part without the consent of a secured creditor.

**70.** A secured creditor shall exercise a post-default right through a judicial process in a court of competent jurisdiction.

Methods of exercising post-default rights

**71.** A debtor or any other person shall, where a secured creditor fails to comply with any obligation under this Part, be entitled to apply for a relief to a court of competent jurisdiction.

Relief for non-compliance

**72.** (1) A debtor or any other person with an interest in a collateral shall be entitled to terminate an enforcement process and redeem the collateral by paying or otherwise performing the secured obligation in full, including the payment of all reasonable costs of enforcement.

Right of redemption

(2) The right of redemption provided under subsection (1) may be exercised at any time before the —

- (a) sale or other disposition, the acquisition or the collection of the collateral; and
- (b) conclusion of an agreement by the secured creditor for the sale or other disposition of the collateral.

(3) Where a secured creditor has leased or licensed a collateral to a third party, a debtor may exercise a right to redeem the collateral subject to the right of a lessee or licensee.

(4) The right of a debtor to redeem a collateral shall have priority over any other person's right to redeem the collateral.

**73.** (1) Where any other creditor commences enforcement proceedings, a secured creditor whose security interest has priority over that of the enforcing creditor shall be entitled to take over the enforcement at anytime before the —

Right of higher ranking secured creditor to take over enforcement

- (a) sale of other disposition, the acquisition or collection of the collateral; and
- (b) conclusion of an agreement by the secured creditor for the sale or other disposition of the collateral.

(2) The right of the higher ranking secured creditor to take over enforcement in terms of subsection (1) shall include the right to enforce security interest by the method available to a secured creditor under this Act.

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Right of secured creditor to obtain possession of collateral

**74.** A secured creditor shall, subject to the right of any person, including a lessee or licensee with a superior right to possession, be entitled to obtain possession of a collateral after a default of payment by a debtor through a judicial process in a court of competent jurisdiction.

Secured creditor rendering collateral unusable

**75.** A secured creditor may render a collateral unusable if the collateral is of a kind —

- (a) that cannot be readily moved; or
- (b) for which adequate storage facilities are not readily available.

Right of secured creditor to dispose of collateral

**76.** (1) A secured creditor may, after a debtor has defaulted in payments, sell or dispose of, lease or license a collateral using a judicial process in a court of competent jurisdiction.

(2) Where a secured creditor exercises the right provided in subsection (1), the method, manner, time, place and other aspects of the sale or other disposition, lease or license shall be determined by the court.

Duty of secured creditor disposing of collateral

**77.** Subject to section 80 (4), a secured creditor who disposes of a collateral shall obtain the best price reasonably obtainable at the time of the sale or other disposal of such collateral.

Distribution of proceeds after disposition

**78.** (1) Where a secured creditor exercises the right provided under section 76 (1), the distribution of the proceeds of sale or other disposition, lease or license of a collateral shall be determined by the court in accordance with the provisions on priority in this Act.

(2) A holder of a subordinate security interest or other right shall, if requested by a secured creditor, furnish the secured creditor with reasonable proof of the subordinate security interest or other right within 10 working days where such secured creditor is required to comply with the demand by the holder of such subordinate security interest or other right for payment.

(3) A secured creditor who enforces a security interest may, whether or not there is a dispute as to the entitlement or priority of any competing claimant, pay the surplus of any net proceeds to a court for distribution in accordance with the provisions on priority in this Act.

Proposal to acquire collateral

**79.** (1) A secured creditor with priority over all other secured creditors may, where a debtor defaults in payment, in writing, propose to acquire some or all of a collateral in part or full satisfaction of a secured obligation.

(2) A proposal made in terms of subsection (1) shall include a statement —

- (a) that the secured creditor proposes to acquire the collateral described in the proposal in part or full satisfaction of a secured obligation;
- (b) of the amount required at the time the proposal is made to satisfy a secured obligation, including interest and a reasonable cost of enforcement, and the amount of the secured obligation that is proposed to be satisfied;

- (c) that a debtor, or any person with a right in a collateral is entitled to redeem the collateral as provided in section 72; and
  - (d) of the date after which a secured creditor will acquire the collateral.
- (3) Where a secured creditor with priority over all other secured creditors proposes to acquire a collateral in terms of subsection (1), the secured creditor shall, within five working days, submit the proposal to —
- (a) a debtor;
  - (b) any other secured creditor that registered a notice in respect to the collateral; and
  - (c) any person with a right or third party to the collateral who informs such secured creditor of the right.

**80.** (1) A person who is entitled to receive a proposal of acquisition of a collateral in terms of section 81(3) and whose interest in the collateral would be adversely affected by the proposal of acquisition of such collateral shall, within 15 working days after receipt of such proposal, serve a secured creditor with a written notice of objection.

Objection to  
proposal to  
acquire  
collateral

(2) A secured creditor who has been served with a written notice of objection in terms of subsection (1) shall, upon receipt of the notice of objection, appeal to a court of competent jurisdiction, within 14 working days of such receipt.

(3) Where a person entitled to receive a proposal of acquisition of a collateral in terms of section 81(3) does not, within 14 working days after receipt of the proposal, object to such proposal, a secured creditor shall, at the expiration of the 14 working days, be deemed to have elected to take the collateral in part or full satisfaction of a secured obligation.

(4) Upon retention of a collateral by a secured creditor, all subordinate security interests and claims in the collateral shall be extinguished.

**81.** (1) Where a secured creditor sells or disposes of a collateral in execution of an order of any court of competent jurisdiction, the buyer or other transferee shall acquire the collateral free of any security interest.

Rights  
acquired in  
collateral

(2) Where a secured creditor leases or licenses a collateral in accordance with this Part, the lessee or licensee shall be entitled to the benefit of the lease or licence during its term, except as against a creditor with a right that has priority over the right of the enforcing secured creditor.

(3) Where a secured creditor sells, leases or licenses a collateral not in accordance with this Part, the buyer, lessee or licensee of the collateral shall acquire a right or benefit described in subsections (1) and (2):

Provided that the buyer, lessee or licensee had no knowledge that the secured creditor is not in compliance with this Part and the non-compliance materially prejudiced the right of a debtor or any other affected person.

## A.108

Debtor may  
reinstate  
security  
agreement

**82.** (1) A debtor may, at any time before a secured creditor disposes of a collateral in satisfaction of a secured obligation, reinstate a security agreement by —

- (a) paying the sums in arrears, exclusive of the operation of an acceleration clause in the security agreement;
- (b) remedying any other default;
- (c) paying a sum equal to the reasonable expenses incurred by the secured creditor in seizing, re-possession, holding, repairing processing, or preparing the collateral for disposal, if those expenses have actually been incurred by such secured creditor; or
- (d) paying any other reasonable expenses incurred by the secured creditor in enforcing the security interest,

unless the debtor has agreed otherwise, in writing, after default.

(2) Unless otherwise agreed by a secured creditor and a debtor, the debtor shall not be entitled to reinstate a security agreement more than twice every one year if a loan period is for more than one year.

Direct  
collection  
of payment

**83.** (1) A secured creditor with a security interest in an account receivable, negotiable instrument or a right to funds credited to a deposit account shall, upon default by a debtor —

- (a) be entitled to collect payment directly from the account debtor of the account receivable, a debtor under the negotiable instrument or deposit-taking institution; and
- (b) apply the funds collected to satisfy the obligation secured by the security interest after deducting the secured creditor's reasonable collection expenses.

(2) A secured creditor may exercise the right to collect under subsection (1) prior to default, if the secured creditor and the debtor so agree.

(3) A secured creditor who exercises the right to collect under subsection (1) or (2) shall be entitled to enforce any personal or property right that secures or supports payment of a collateral.

(4) Where a deposit-taking institution holds a security interest in a deposit account which is automatically perfected, the deposit-taking institution may apply the balance of the deposit account to a secured obligation.

(5) Where a secured creditor holds a security interest in the funds credited to a deposit account which is perfected by a control agreement, the secured creditor may instruct a deposit-taking institution to pay the balance of the deposit account to such secured creditor.

Collection  
of payment  
by outright  
transferee  
of account  
receivable

**84.** (1) A transferee shall, in case of an outright transfer of an account receivable by agreement, be entitled to collect the amount receivable at any time after payment becomes due.

(2) A transferee who exercises the right to collect under subsection (1) shall be entitled to enforce any personal or property right that secures or supports payment of the account receivable.

PART VII — *General Provisions*

- 85.** Except as otherwise provided in this Act, the determination of whether movable property are consumer goods, inventory, equipment or agricultural produce shall be made at the time when a security agreement is concluded and a secured creditor may rely on the representations of a debtor as to the intended use. Classification of assets
- 86.** (1) A debtor may request a secured creditor to send or make available to any specified person, at an address specified by the debtor, any of the following — Secured creditor to provide information to debtor
- (a) a summary of a security agreement that creates or provides for a security interest held by the secured creditor in the movable property of the debtor;
  - (b) a statement in writing of the amount of the current indebtedness of the debtor and the terms of payment of the indebtedness;
  - (c) an itemised list of movable property indicating which items are collateral, unless the security interest is over all of the movable property of the debtor; or
  - (d) a statement of account indicating the pay-off amount needed to fully satisfy the secured obligation.
- (2) Where a secured creditor no longer has a security interest in a collateral, the secured creditor shall disclose the name and address of the —
- (a) immediate successor in interest or transferee; or
  - (b) latest successor in interest or transferee.
- (3) A secured creditor shall comply with a request made under subsection (1) within 14 working days of its receipt.
- 87.** (1) A secured creditor or debtor in possession of a collateral shall exercise reasonable care to preserve a tangible movable property. Obligations of parties in possession
- (2) A secured creditor shall have the right to inspect a collateral in possession of a debtor or another person.
- 88.** A person shall not be liable for any action in damages for anything done by any person in the exercise or performance of any power or function conferred or imposed on the person under this Act, unless the act or omission is done in bad faith or is due to want of reasonable care or diligence. Exemption from liability for actions or omissions
- 89.** A person who contravenes a provision of this Act where no penalty has been provided commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding three years, or to both. General penalties
- 90.** (1) The Minister may make regulations providing for any matter under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to the provisions of this Act. Regulations

**A.110**

- (2) Without limiting the generality of subsection (1), the regulations may provide for any of the following matters —
- (a) the conduct of the business of the Registry;
  - (b) the form and process for registering a notice with the Registry;
  - (c) the procedure to be followed in connection with any application or request by the public for access to the Registry, including the procedure for conducting a search of the Registry records;
  - (d) the assignment of unique identification number to a secured creditor and debtor;
  - (e) the provision and certificate of a copy of a notice registered in the Registry;
  - (f) the means for indexing information submitted to the Registry;
  - (g) the service of notices and other documents with respect to the Registry;
  - (h) the payment of fees in respect of any matter in this Act; and
  - (i) any matter required to be provided for in relation to the Collateral Registry Office.

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,  
*Clerk of the National Assembly.*