

**THE MOVABLE PROPERTY (SECURITY INTEREST)
ACT, 2016**

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SCHEDULE

GOVERNMENT OF ZAMBIA

ACT

No. 3 of 2016

Date of Assent: 5th April, 2016

An Act to provide for the creation of security interests in movable property so as to contribute to economic development; harmonise secured transaction laws; provide for harmonisation of conflict of laws in order to promote the financing of international trade and make security interests effective against third parties; enhance the availability of low-cost secured credit to allow debtors to use the full value inherent in their assets to support credit; establish a Collateral Office and Collateral Registry for a single comprehensive registration regime for secured transactions in movable property; establish streamlined procedures for obtaining security interests and reducing transaction costs by minimising formalities; ensure effectiveness of security agreements and enforceability of security agreements and interests; provide for perfection of security interests; to establish the determination of priority between security interests; and provide for matters connected with, or incidental to, the foregoing.

[6th April, 2016

ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Movable Property (Security Interests) Act, 2016. Short title

2. (1) In this Act, unless the context otherwise requires— Interpretation
“accession” means goods that are physically attached to other goods without losing the identity of each group of goods which maintain their original identity;

- “ account debtor ” means a person liable for payment of an account receivable and includes a guarantor or other person with secondary liability for payment of the account receivable;
- “ account receivable ” means a right to payment of a monetary obligation, excluding a right to payment evidenced by a negotiable instrument and to payment of money credited to a bank account;
- “ after-acquired property ” means movable property that a debtor acquires after the conclusion of a security agreement;
- Act No. 15 of 2010 “ Agency ” means the Patents and Companies Registration Agency established under the Patents and Companies Registration Agency Act, 2010;
- “ assignee ” means a person to whom an assignment of an account receivable is made;
- Cap. 387 “ bank ” has the meaning assigned to it in the Banking and Financial Services Act;
- “ bank account ” means an account, maintained by a bank or financial institution, to which monies for a customer are credited, and includes monies received by the bank but not yet credited into the customer’s account;
- Act No. 15 of 2010 “ Board ” means the Board of the Agency constituted in accordance with the Patents and Companies Registration Agency Act;
- “ collateral” means movable property, whether tangible or intangible, that is subject to a security interest;
- “ Collateral Registry ” means the Registry established in accordance with section *eleven*;
- “ Collateral Registry Office ” means the Collateral Registry office established in accordance with section *seven*;
- “ commercial consignment ” means a consignment where a consignor has reserved an interest in goods that the consignor has delivered to the consignee for the purpose of sale, lease or other disposition and both the consignor and consignee deal in the ordinary course of business in goods of that description, excluding an agreement under which goods are delivered to an auctioneer for sale;

- “commingled properties” means goods mixed with goods of the same kind to become part of a product or mass so as to have lost their original identity in the product or mass;
- “company” has the meaning assigned to it in the Companies Act; Cap. 388
- “competing claimant” means a secured creditor of a debtor that is competing with another secured creditor in the same collateral;
- “consumer goods” means goods that a debtor predominantly uses or intends to use for personal, family or household purposes;
- “control agreement” means an agreement between a bank or financial institution with a debtor who is a customer of the bank or financial institution and a secured creditor, in which the bank or financial institution has agreed to follow instructions from the secured creditor without the further consent of the debtor;
- “debtor” means a person who creates a security interest to secure that person’s obligation or that of another person and includes a—
- (a) lessee under a financial lease;
 - (b) buyer that acquires goods whose title is to be retained by the seller;
 - (c) grantor of any charge, chattel mortgage, pledge or lien in movable property;
 - (d) consignee who receives goods from another person under a commercial consignment; and
 - (e) seller of accounts receivable and a lessee under an operating lease where the receivables or the object that is subject of the lease does not secure an obligation;
- “default” means the occurrence of an event that, under a security agreement, gives a secured creditor the right to enforce a security interest;
- “equipment” means a tangible asset used by a person in the operation of its business, and includes plant and machinery;

“ farm product ” includes—

- (a) crops grown, growing or to be grown, harvested and their produce and fruit;
- (b) timber, both standing and growing;
- (c) fish stocks, livestock, bees and poultry and the produce and progeny thereof;
- (d) seeds, fertilisers and manure; and
- (e) other supplies and equipment used or produced in a farming operation;

“ financial contract ” means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, equities, bonds, indices, financial instruments, repurchase or securities lending transactions and any other transaction similar to a transaction referred to, entered into or used in financial markets or commodities markets, and includes any combination of the transactions referred to;

Cap. 387

“ financial institution ” has the meaning assigned to it in the Banking and Financial Services Act;

“ financial lease ” means a lease of a tangible asset, other than a negotiable instrument or negotiable document, that is the object of a lease agreement, and includes a hire-purchase agreement, where—

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

“ financing statement ” means a document, in the prescribed form, containing the information specified in section *thirteen*, that effects a registration to perfect a security interest in collateral;

“ fixture ” means a tangible asset that is physically attached to immovable property without losing its separate identity, excluding improvements;

- “ hire-purchase agreement ” has the meaning assigned to it in the Hire-Purchase Act; Cap. 399
- “ immovable property ” means land or other property that cannot be moved and includes an object so firmly attached to the land that it is regarded as part of the land;
- “ improvements ” includes a building or any other structure of whatever kind on land;
- “ intangible asset ” includes movable property, a financial contract, incorporeal rights, excluding goods, documents of title, securities, money and negotiable instruments;
- “ inventory ” means tangible assets that are
- (a) held for sale or lease in the ordinary course of business; and
 - (b) raw materials or work-in-process;
- “ investment security ” means a security defined in the Securities Act and includes an instrument issued in bearer or registered form as a type commonly recognised as a medium for investment and a share or other interest in the property or enterprise of the issuer; Cap. 354
- “ land ” has the meaning assigned to it in the Lands Act; Cap. 184
- “ land lease ” has the meaning assigned to the word “lease” in the Lands Act; Cap. 184
- “ money ” means the currency authorised as legal tender by the Bank of Zambia, in accordance with the Bank of Zambia Act; Cap. 360
- “ movable property ” includes goods, intangibles, securities, money, negotiable instruments and negotiable documents;
- “ negotiable document ” means a document, such as a warehouse receipt or a bill of lading, that embodies a right to delivery of tangible assets and satisfies the requirement for negotiability under the law governing the document;
- “ negotiable instrument ” means an instrument, such as a cheque, bill of exchange or promissory note, that embodies a right to payment and satisfies the requirements for negotiability under a law governing negotiable instruments;
- “ officer ” means an employee or agent of the Agency;

“operating lease” means an agreement, that exceeds one year, relating to a transaction in which the leased asset has a useful life at the end of the lease term, the lessee does not have an option to purchase the leased asset at the end of the term of the lease for a nominal price and title to the leased asset is not transferred to the lessee automatically at the end of the lease term;

“perfected security interest” means a security interest that has become effective against third parties by control, possession, registration or temporarily, as provided in this Act;

“possession” means the possession of collateral by a secured creditor that is not in actual or apparent possession or control of a debtor or a debtor’s agent;

“priority” means the right of a secured creditor to derive the economic benefit of a security interest in preference to the right of a competing claimant;

“proceeds” means identifiable or traceable movable property received in respect of a collateral, and includes what is received as a result of a sale, other disposition, collection, lease or license of the collateral, including proceeds, natural fruits, revenues, dividends, distributions, insurance proceeds and claims arising from defects in, damage to, or loss of, the collateral or other disposition of the collateral;

“purchase money security interest” means—

(a) a security interest in collateral taken or retained by a seller or financial lessor to secure all or part of the purchase price of the collateral;

(b) a security interest taken by a person who provides credit to enable a debtor to acquire the collateral if such credit is in fact so used;

(c) an interest of the lessor under an operating lease with a term that exceeds one year; or

(d) an interest of a consignor who delivers goods to a consignee under a commercial consignment, excluding a transaction of sale and lease back to the seller;

“registered financing statement” means a financing statement that has been registered in the Collateral Registry in accordance with section *twelve*;

- “ Registrar ” means the person appointed Registrar in accordance with the Patents and Companies Registration Agency Act, 2010; Act No. 15 of 2010
- “ search ” means an electronic examination of the records contained in the Collateral Registry;
- “ secured creditor ” means a person in whose favour a security interest is created, and includes a—
- (a) financial lessor;
 - (b) seller who reserved title to the goods sold;
 - (c) chargee under any type of charge, chattel mortgagee or holder of any type of consensual lien; and
 - (d) buyer of accounts receivable, commercial consignor and an operating lessor under an operating lease where the account receivable, goods provided under the commercial consignment or the leased object do not secure an obligation;
- “ secured obligation ” means an obligation secured by a security interest;
- “ security agreement ” means an agreement between the debtor and secured creditor that creates or provides for a security interest;
- “ security interest ” means a property right or interest in movable property that is created by agreement or a transaction that secures 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 a title in movable property;
 - (b) right under a financial or operating lease;
 - (c) right of a transferee of accounts receivable; and
 - (d) right of the commercial consignor even if it does not secure payment or other performance of an obligation;
- “ tangible assets ” means every form of movable property, including inventory, equipment, consumer goods, accession, negotiable instruments, negotiable documents and money, and the word “goods” is construed accordingly;

Act No. 35
of 2010

“unperfected security interest” means a security interest which has not been perfected in accordance with this Act;

“value” has the meaning assigned to it in the Agricultural Credits Act, 2010;

“confirmation statement” means a confirmation by the Registrar that the requirements, as provided for under this Act or regulations issued under this Act, for the registration of a financing statement or an amendment to a registered financing statement have been complied with;

Act No. 35
of 2010

“warehouse receipt” has the meaning assigned to it by the Agricultural Credits Act, 2010; and

“writing” includes an electronic message if the information contained therein is accessible so as to be usable for subsequent reference.

(2) For the purposes of this Act, the determination of whether goods are—

(a) consumer goods;

(b) equipment;

(c) farm products; or

(d) inventory;

is to be made at the time when the security agreement is concluded and the secured creditor may rely on the representations of the debtor as to the intended use.

Application
and non-
application
of Act

3. (1) Despite any other written law and subject to section *four*, this Act applies to all interests in movable property created by agreement that secures payment or other performance of an obligation regardless of the form of the transaction, type of movable property, status of the debtor or secured creditor or the nature of the secured obligation, including—

(a) a security interest in intangible or tangible assets, a lien, charge, financial lease, right under a hire-purchase agreement, pledge, security trust deed, trust receipt, consignment, lease, assignment or other interest in movable property that secures payment or performance of an obligation;

(b) the creation, perfection and priority of a security interest in proceeds where this Act is applicable to the creation, perfection and priority of the security interest in the original collateral from which the proceeds arose; and

(c) a security interest created by a consumer or acquired by a secured creditor without affecting the consumers rights as provided in the Competition and Consumer Protection Act, 2010.

Act No.
24 of 2010

(2) This Act also applies to security interests created by judgments of a court in accordance with the Civil Courts (Attachment of Debts) Act or the operation of any other written law.

Cap. 78

(3) This Act shall not apply to—

(a) the creation or transfer of an interest in immovable property;

(b) a mortgage of a ship regulated by the Merchant Shipping Act and an interest in aircraft and aircraft engines as defined in the Civil Aviation Authority Act, 2012, Civil Aviation Act, 2016; or any other law regulating the aviation sector; and

Cap. 468

Act No. 7
of 2012
Act No.
of 2016

(c) pledges of securities under any law regulating a central securities depository system.

4. (1) This Act applies to the creation, perfection and priority of a security interest where the—

Conflict of
laws

(a) tangible asset is located in Zambia;

(b) debtor is located in Zambia where the collateral is an intangible asset;

(c) debtor is located in Zambia and the tangible asset is of a type ordinarily used in more than one country; or

(d) bank account is maintained in a bank or financial institution that has a place of business in Zambia.

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

(3) For the purposes of this Act—

- (a) a debtor is located in Zambia if the debtor has a place of business in Zambia;
- (b) the habitual residence of the debtor shall apply if the debtor does not have a place of business in Zambia; and
- (c) the location of the property or debtor shall be determined at the time of the creation of the security interest and for purposes of perfection and determining of the priority of the security interest, at the time the dispute arose.

(4) If 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 is, with respect to perfection and priority, the location prior to the change in location.

(5) If a security interest is perfected under the law of another State and this Act becomes applicable, the security interest remains perfected, in accordance with this Act, for ten working days after the change in location and, thereafter, only if perfection requirements of this Act are satisfied.

Bankruptcy
and
insolvency
proceedings

5. (1) Subject to subsection (2), the commencement of bankruptcy or insolvency proceedings under a law relating to bankruptcy or insolvency shall not override the provisions of section *four*.

(2) Despite subsection (1), the law relating to bankruptcy or insolvency shall apply if the bankruptcy proceedings or insolvency proceedings, as the case may be, commenced under that law in relation to—

- (a) avoidance of security interest;
- (b) treatment of secured creditors;
- (c) ranking of claims; and
- (d) distribution of proceeds.

(3) For the avoidance of doubt, an unperfected security interest created by a debtor shall not be effective against a liquidator or receiver carrying out insolvency proceedings or official receiver in relation to the estate of the debtor.

Supremacy
of Act
Cap.1

6. (1) Subject to the Constitution, where there is any inconsistency between the provisions of this Act and the provisions of any other written law relating to security interests in movable property or the creation and maintenance of a registry for security interests in movable property, the provisions of this Act prevail to the extent of the inconsistency.

(2) Despite the generality of subsection (1), this Act shall prevail over any other written law on security interests created by an agreement, including—

- (a) an agreement to sell subject to retention of title;
- (b) a hire-purchase agreement made in accordance with the Hire-Purchase Act;
- (c) an outright transfer of accounts receivable;
- (d) an operating lease;
- (e) consignment that does not secure an obligation; and
- (f) any other interest that secures an obligation.

Cap. 399

(3) The principles of common law, equity and the law of merchants, except insofar as they are inconsistent with this Act, continue to apply with respect to security interests in movable property.

PART II

COLLATERAL REGISTRY OFFICE AND COLLATERAL REGISTRY

7. (1) There is established in the Agency the Collateral Registry Office which shall be responsible for the Collateral Registry and any other related functions, under the general direction of the Board.

Establishment of Collateral Registry Office and administration of Act

(2) The Agency shall administer this Act.

(3) The seal of the Agency, kept in terms of the Patents and Companies Registration Agency Act, 2010 shall be used for purposes of this Act and the impression made for such purposes shall be judicially noticed.

Act No. 15 of 2010

8. (1) The Registrar shall, in addition to the Registrar's other functions and powers as specified in the Patents and Companies Registration Agency Act, 2010 and any other law, exercise the powers and perform the functions conferred on the Registrar in this Act.

Functions of Registrar Act No. 15 of 2010

(2) The functions of the Registrar shall be to manage and facilitate electronic access by users of the Collateral Registry, process fees, oversee the operation and maintenance of the registration system and gather statistical data relating to the Collateral Registry.

(3) The Registrar or an officer shall not give legal advice on the legal requirements for registration and search or on the legal effects of registration and search, except that the Registrar or an officer may give practical advice relating to registration and search processes.

(4) The Registrar or an officer shall not alter or remove information in a registered financing statement or amendment to a registered financing statement.

Delegation of functions

9. The Registrar may, in writing, delegate to an officer, appointed under this Act, any of the functions and powers vested in the Registrar in this Act, except the power of delegation.

Officers of Collateral Registry Office

10. (1) The Board shall appoint, on such terms and conditions as the Board may determine, such officers as it considers necessary for the effective performance of the functions of the Agency and Registrar relating to the Collateral Registry.

(2) A power conferred or to be performed by the Registrar, in accordance with this Act, may be exercised or performed by an officer, appointed under subsection (1), acting under delegated powers, as specified in section *nine*, under the general control and direction of the Board and the Registrar.

Establishment of Collateral Registry and storage of information

11. (1) There is established the Collateral Registry, which is an electronic registry.

(2) The Collateral Registry shall store information and records in accordance with section *thirteen*.

(3) The Registrar or an officer shall not verify whether authorisation for registration has been properly granted.

(4) The Collateral Registry shall contain information provided in financing statements, as specified under section *thirteen*, which shall be indexed in a manner that a debtor, secured creditor and the serial number of the collateral can be identified and easily retrieved by a search.

(5) The Minister shall issue regulations on the storage and indexing of information in the Collateral Registry.

Financing statements and registration

12. (1) A debtor who enters into a security agreement automatically authorises the registration of a financing statement and any amendments to be done to the registered financing statement.

(2) A single financing statement may relate to one or more than one security interest created by a debtor in favour of the same secured creditor whether they arise under one or more than one security agreements between the same parties.

(3) A creditor or agent of the creditor may register a financing statement before or after a security agreement is made.

(4) A debtor may authorise, in writing, registration of a financing statement prior to the conclusion of a security agreement.

(5) The Registrar shall not conduct any scrutiny of the information provided in a financing statement or be responsible for the accuracy or legality of the information in a financing statement.

13. (1) A secured creditor who intends to register a financing statement in the Collateral Registry shall ensure that the financing statement contains the following information:

Information
required to
register
financing
statement

- (a) in the case where the debtor is a natural person, the name, date of birth, identification number and address of the debtor;
- (b) in the case where the debtor is a corporate or unincorporated body, as the case may be, the name, address, registration or incorporation number of the corporate or unincorporated body and the name or job title and contact details of the person acting on behalf of the corporate or unincorporated body;
- (c) in the case of a natural person, the name, date of birth, identification number and address of the secured creditor;
- (d) in the case of a corporate or unincorporated body, as the case may be, the name, address, registration or incorporation number of the corporate or unincorporated body and the name or job title and contact details of the person acting on behalf of the corporate or unincorporated body;
- (e) a description of the collateral;
- (f) the date of effectiveness, perfection or any prior registration under any other written law;
- (g) the maximum amount for which the secured obligation may be enforced;
- (h) the term of effectiveness of the registration which shall not exceed five years;
- (i) a statutory declaration certifying that the information registered is true and complies with the Act; and
- (j) any other appropriate information under this Act or as prescribed by regulations issued under this Act.

(2) Collateral, other than that which is described by a serial number as prescribed, shall be described as contained in a security agreement provided for in section *thirty-four*.

Non-
registration
of financing
statement

14. A financing statement shall not be registered in the Collateral Registry if—

(a) it is not processed electronically in the prescribed manner or form;

(b) it does not contain the information specified in section *thirteen*; or

(c) the prescribed fee for a registration of the financing statement or an amendment to a registered financing statement has not been paid electronically.

Effect of
registration

15. The registration of a financing statement shall be effective from the date and time when the information in the financing statement is entered into the Collateral Registry and a registration number is assigned to it.

Confirmation
statement

16. (1) The Registrar shall, on registration of a financing statement or an amendment to a registered financing statement in the Collateral Registry, provide a confirmation statement electronically to the person who registered the financing statement or amendment to the registered financing statement.

(2) A secured creditor shall, not later than fourteen working days after the day on which the secured creditor received the verification statement, give a copy of the verification statement to the debtor.

Invalidity
of
registration
of
financing
statement

17. (1) Notwithstanding section *eighteen*, and subject to subsection (2), the registration of a financing statement or amendment to the registered financing statement shall be invalid if the registered financing statement or amendment to the registered financing statement has a defect, irregularity, omission or error in the—

(a) name and identification number of the debtor; or

(b) serial number of the collateral, if the collateral is of a kind that is required to be described by a serial number.

(2) A defect, an irregularity, omission or error in a registered financing statement or amendment to the registered financing statement relating to the—

(a) name and identification number of a debtor shall render the registration invalid only with respect to that debtor;
or

(b) serial number of the collateral shall render the registration invalid only with respect to the collateral identified by the serial number.

(3) A registered financing statement or amendment to the registered financing statement that contains a defect, an irregularity, omission or error in the name and identification number of the debtor but correctly indicates the serial number of the collateral remains valid with respect to that collateral.

(4) A defect, an irregularity, omission or error in a registered financing statement or amendment to the registered financing statement of the description of the collateral, other than the serial number, shall render the registration invalid with respect to that collateral if the error may seriously mislead a person.

(5) The following shall not render invalid the registration of a financing statement or amendment to a registered financing statement:

(a) an incorrect description of some collateral which is part of other collateral adequately described; or

(b) a defect, an irregularity, omission or error in—

(i) the name, identification number or address of the secured creditor;

(ii) the address of the debtor; or

(iii) any other information voluntarily entered by the secured creditor.

(6) Despite any other provision of this Act or other written law, a fee paid for the registration of a financing statement or an amendment to a registered financing statement shall not be refunded if the registration is invalidated in accordance with this Act.

18. (1) Subject to section *seventeen*, the validity of a registered financing statement is not affected by any defect, irregularity, omission or error in the financing statement, unless the defect, irregularity, omission or error is of a material nature and is seriously misleading as specified in section *seventeen*.

(2) For the avoidance of doubt, in order to establish that a defect, irregularity, omission or error is of a material nature and is seriously misleading, it shall not be necessary to prove that a person was actually misled by it.

Validity of
registered
financing
statement

(3) The failure to include a description of any item or kind of collateral in a financing statement or amendment to a registered financing statement or an inadequate description of the collateral shall not affect the validity of the registered financing statement in respect of the description of another collateral included in the registered financing statement or amendment to the registered financing statement.

Duration of registration and renewal
Cap. 72

19. (1) Despite the Law Reform (Limitation of Actions, etc.) Act, a registered financing statement shall remain valid—

(a) for the term specified in the registered financing statement which shall not exceed five years;

(b) for a period of five years after the date of registration of the financing statement, commencing on the date of registration; or

(c) until the date of discharge and removal of the registered financing statement from the Collateral Registry.

(2) The period of registration of a financing statement may be extended or renewed before expiry of the period of registration by the registration of an amendment to the registered financing statement that indicates a new period of validity which shall not exceed five years.

Transfer of financing statement

20. (1) Where all or part of a security interest that is perfected by registration has been transferred, an amendment to the registered financing statement shall be registered by the transferor, within fourteen days of the transfer.

(2) Where an amendment to a registered financing statement is effected, as specified in subsection (1), the amendment to the registered financing statement shall include a description of the collateral that has been transferred.

(3) If a secured creditor, with a security interest that is not perfected by registration, transfers the security interest, a financing statement in which the transferee is disclosed as the secured creditor may be registered.

(4) An amendment to a registered financing statement or a financing statement, relating to a transfer of a security interest, may be registered in the Collateral Registry before or after the transfer of the security interest.

21. (1) A registered financing statement may be amended or discharged by the secured creditor by registering the amendment or discharge in the Collateral Registry at any time before expiration of its effectiveness.

Amendment
or discharge
of financing
statement

(2) An amendment to a registered financing statement, as provided in subsection (1), that—

(a) adds collateral;

(b) adds a new debtor; or

(c) increases the maximum amount of the secured obligation;

shall be effective from the date the amendment to the registered financing statement is registered in the Collateral Registry.

(3) Where the debtor's name and identification number changes in a manner that renders the registered financing statement no longer retrievable in a search, the security interest shall not be effective with respect to the collateral that the debtor acquired thirty days after the changed identification but the registration shall remain effective with respect to all pre-existing collateral and the collateral acquired by the debtor up to the thirty days after the changed identification.

22. (1) Where a registered financing statement relates exclusively to a security interest in consumer goods, a secured creditor shall discharge the registered financing statement within fourteen days after all obligations under the security agreement creating the security interest have been performed, unless the registration expires before that date.

Discharge of
registration
relating to
consumer
goods

(2) An amendment to a registered financing statement which seeks to discharge the registered financing statement, as provided in subsection (1), shall be lodged in the Collateral Registry in the prescribed manner and form upon payment of the prescribed fee.

23. (1) A debtor may send a demand, in writing, to the secured creditor that the secured creditor discharges or registers an amendment to the registered financing statement if—

Demand by
debtor to
amend or
discharge
registration

(a) the secured creditor has agreed to release part of the collateral described in the registered financing statement;

(b) the collateral described in the registered financing statement includes an item or kind of movable property that is not collateral under a security agreement;

(c) the obligations under the security agreement to which the registered financing statement relates have been performed and there is no commitment to make future advances;

(d) no security agreement exists between the parties; or

(e) the security interest is extinguished.

(2) A secured creditor shall, upon receipt of a demand, made in accordance with subsection (1), and where the secured creditor has no objection, register the amendment to the registered financing statement or the discharge of the registered financing statement, in the Collateral Registry, within fourteen days of the receipt of the demand.

Amendment
or discharge
by court
order

24. (1) If a secured creditor fails to comply with a demand made by a debtor, as specified in section *twenty-three*, the debtor may apply to a court for an order to amend the registered financing statement or discharge the registered financing statement.

(2) A court may issue an order to—

(a) amend the registered financing statement;

(b) discharge the registered financing statement; or

(c) maintain the registered financing statement;

and the secured creditor shall amend, discharge or maintain the registration of the registered financing statement and shall inform the debtor accordingly.

System
malfunction

25. (1) The Agency is responsible for the administration of the registration system.

(2) Where a system malfunction occurs, the Agency shall restore or have the system restored.

Access to
Collateral
Registry,
inspection
and copies

26. The Collateral Registry office shall be open to the public at reasonable working hours and any person may search the Collateral Registry electronically and obtain a copy of the search results in accordance with this Act and regulations made by the Minister and upon payment of such fee as may be prescribed for the search.

Evidentiary
provisions

27. A copy of, or extract from, any financing statement in the Collateral Registry which has been certified by the Registrar to be a true copy or extract shall be admitted in any proceedings, as of equal validity to the original document, and shall be conclusive evidence of the information stated therein.

28. (1) The Registrar may, upon request and payment of a prescribed fee, issue a certificate of status of a registered financing statement which conclusive evidence of the existence of the information in the Collateral Registry as of the date and time of the issuance of the certificate of status or a certified copy.

Certificate of status of registered financing statement

(2) The Registrar shall, on the payment of the prescribed fee, provide a secured creditor or any other person with a certified copy of any document, stored in the Collateral Registry, which the secured creditor or any other person seeks to obtain.

29. A person aggrieved by a decision of the Registrar may appeal to a court against the decision, within thirty days after the date on which the person is notified of the decision, and the court may confirm, reverse or vary the decision or make such order or give such directions in the matter as are appropriate.

Appeal against decision of Registrar

30. A person may take an oath or swear to the truth of an affidavit or may, in lieu thereof, make an affirmation or declaration in accordance with the law relating to affirmations or declarations in Zambia, with respect to a matter under this Act.

Oaths and affirmations

31. (1) In a legal proceeding in which the relief sought includes modification of information in the Collateral Registry, the Registrar has the right to appear and be heard, and shall appear if so directed by a court.

Registrar to appear in legal proceedings

(2) The Registrar shall, unless otherwise directed by a court in lieu of appearing and being heard, submit to the court a written statement, signed by the Registrar, giving particulars of the matter in issue or of the grounds of a decision given by the Registrar affecting it or of the practice of the Collateral Registry in like cases or of such other matters relevant to the issues and within the Registrar's knowledge as the Registrar may determine, and the statement shall be considered to form part of the evidence in the proceedings.

32. (1) The Minister may, by statutory instrument, make regulations for, or with respect to, any matter under this Part that is necessary for carrying out or giving effect to the registration processes and procedures.

Regulations on registration processes and procedures

(2) Without limiting the generality of subsection (1), regulations may be made on the following matters:

(a) the conduct of the business of the Collateral Registry;

- (b) the format of financing statements to be registered in the Collateral Registry;
- (c) the payment of fees in respect of a matter under this Part;
- (d) the procedure to be followed in connection with an application or request to the Registrar or any proceeding before the Registrar;
- (e) the provision of copies of any financing statements registered in the Collateral Registry and the certification of such copies;
- (f) the making of searches including the times when, and the manner in which, the searches may be made;
- (g) the service of notices and other documents with respect to the Collateral Registry; or
- (h) any matter required to be provided for in relation to the Collateral Registry Office or the Collateral Registry.

PART III

CREATION OF SECURITY INTERESTS

Creation of security interest and effectiveness

33. (1) Despite any other written law, a security interest may be created by a natural person, a body corporate or an unincorporated body in accordance with this Act.

(2) A security interest may secure any type of obligation, whether present, future, determined, determinable, conditional, unconditional, fixed or fluctuating.

(3) A security interest in movable property is created by a security agreement which shall be effective as between a debtor and secured creditor according to the terms of the security agreement.

(4) A security interest in movable property is created where—

(a) a debtor has rights or the power to create a security interest, at the time of the conclusion of a security agreement; and

(b) a debtor acquires rights or the power to create a security interest subsequent to the conclusion of a security agreement when the debtor acquires such rights or powers.

Security agreements

34. (1) A security agreement shall—

(a) reflect the intent of the parties to create a security interest;

- (b) identify the secured creditor and the debtor;
- (c) describe the secured obligation, including the maximum amount for which the security interest is enforceable; and
- (d) describe the collateral in a manner that reasonably allows its identification in accordance with section *thirty-five*.

(2) A security agreement may provide for the creation of a security interest in any type of movable property, parts of movable property or undivided rights in movable property.

(3) For purposes of this Act, a mode or standard security agreement may be presented.

35. (1) A security interest created in respect of collateral is effective only if a security agreement contains adequate description of the collateral as specified under subsection (2).

Description of collateral in security agreement

(2) For the purposes of a security agreement, a description of collateral is adequate if the collateral is described by—

- (a) item, kind, type or category; or
- (b) a statement that a security interest is taken in the debtor's present and afteracquired movable property, except for specified items or kinds of movable property as agreed by the parties.

(3) A description of collateral is inadequate if it describes the collateral as consumer goods without specific description in accordance with paragraph (a) of subsection (2).

36. (1) A security interest is effective when—

- (a) the debtor has rights in the collateral;
- (b) the security agreement is concluded on the dates agreed to by the parties; and
- (c) value is given by the secured creditor.

Effectiveness of security interest generally

(2) Subsection (1) shall not apply if the parties to a security agreement have agreed that a security interest shall be effective at a later time, in which case the security interest shall be effective at the time specified in the security agreement.

37. A security interest in after-acquired movable property is created without written consent or any further act of a debtor, except that where the after-acquired movable property is a consumer good, the debtor shall provide written consent.

Creation of security interest in after-acquired movable property

Continuation of security interest to proceeds or, commingled property

38. (1) A security interest automatically continues in the proceeds of the collateral, whether or not the security agreement contains a description of the proceeds.

(2) A security interest created in tangible property before being commingled property continues in the mass or product, except that such security interest is limited to the value of the collateral immediately before it became part of the commingled property.

Rights of debtor in collateral

39. (1) For the purposes of this Act—

(a) for as long as a transferee’s interest in accounts receivable remains unperfected, a debtor is considered to have rights and title to the accounts receivable; and

(b) the debtor is considered to have sufficient rights to create a security interest in the collateral even though the seller, financial lessor, operating lessor under an operating lease and other creditor claims ownership to the collateral.

(2) A security interest may be created in the rights that a debtor may have to the collateral.

Debtor may transfer collateral

40. (1) The rights of a debtor in collateral may be transferred despite a provision in the security agreement prohibiting such transfer or declaring the transfer to be a default.

(2) A transfer by the debtor does not prejudice the rights of a secured creditor under the security agreement, including the right to treat a prohibited transfer as an act of default.

(3) In this section, “transfer” includes a sale, the creation of a security interest or a transfer under judicial enforcement proceedings.

Effectiveness of security interests in after-acquired movable property

41. (1) A security interest in after-acquired movable property becomes effective without specific appropriation by the debtor, except that—

(a) consumer goods are not an accession or do not replace the collateral described in the security agreement; or

(b) security interest in the consumer goods is not a purchase-money security interest.

(2) In case of an appropriation of after-acquired property that is consumer goods, an appropriation shall be consented to by the debtor.

42. (1) A security interest in an accounts receivable shall be effective between a debtor and a secured creditor and against the account debtor, despite any agreement limiting in any way the rights of the debtor to transfer the accounts receivables, including the right to create a security interest.

Ineffectiveness
of
assignment
clauses

(2) This section does not affect an obligation or liability of a debtor for breach of an agreement, referred to in subsection (1), but the secured creditor may not avoid the security agreement on the sole ground of breach of the agreement.

(3) A security interest in a bank account is effective, despite an agreement between the debtor and the bank or financial institution, except that the bank or financial institution shall not owe any duty to the secured creditor in the absence of the bank's or financial institution's consent.

43. A security interest created in a document of title extends to the goods covered by the negotiable document.

Security
interest
created in
negotiable
document

PART IV
PERFECTION OF SECURITY INTERESTS

44. (1) A security interest is perfected when—

Perfection
of security
interests

(a) the security interest has been created; and

(b) either

(i) a financing statement has been registered in respect of the security interest;

(ii) the secured creditor, or another person acting on behalf of the secured creditor has possession of the collateral; or

(iii) the secured creditor or another person acting on behalf of the secured creditor has control of the collateral that is a bank account.

(2) Subsection (1), applies regardless of the order in which the steps referred to in paragraph (b) of subsection (1) have occurred.

(3) Control exists, with respect to a bank account—

(a) automatically upon the creation of a security interest if a bank or financial institution that maintains the bank account is the secured creditor; or

(b) upon conclusion of a control agreement.

	<p>(4) For the purposes of this section, a secured creditor is not in possession of collateral that is in the actual or apparent possession or control of the debtor or the debtor's agent.</p>
Continuity of perfection	<p>45. A security interest is continuously perfected if —</p> <p>(a) the security interest is perfected in accordance with this Act; and</p> <p>(b) there is no intervening period during which the security interest is unperfected.</p>
Continuation of perfection of security interest in proceeds	<p>46. A security interest remains continuously perfected in proceeds if—</p> <p>(a) the security interest in the original collateral is perfected by registration of a financing statement that contains a description of the proceeds; or</p> <p>(b) the proceeds are cash proceeds that consist of money, accounts receivable, negotiable instruments, investment securities or funds credited to a bank account.</p>
Temporary perfection of security interest in proceeds	<p>47. (1) If proceeds of a security interest are not cash proceeds and are not within the description of the collateral included in the registered financing statement, a security interest in the proceeds shall be temporarily perfected until the expiration of twenty-one days from when the proceeds arose.</p> <p>(2) If a secured creditor fails to perfect a security interest within twentyone days after the proceeds arose, the secured creditor's security interest in the proceeds becomes unperfected.</p>
Continuation of perfection in transferred collateral	<p>48. A security interest does not become unperfected only because the collateral described in the registered financing statement is sold or otherwise transferred, leased or licensed, unless the secured creditor has authorised such transfer, lease or licence.</p>
Perfection with respect to negotiable document, negotiable instrument and investment security certificate	<p>49. (1) A security interest in a negotiable document, negotiable instrument or investment security may be perfected by the registration of a financing statement or through possession by the secured creditor.</p> <p>(2) A perfected security interest in a negotiable document extends to the goods covered by the negotiable document.</p>
Perfection where goods with bailee	<p>50. A security interest in goods in the possession of a bailee is perfected when the security interest has been created and—</p> <p>(a) a financing statement relating to the goods is registered;</p>

(b) the security interest in the negotiable document to the goods has been delivered to the secured creditor; or

(c) the bailee, who is not the debtor

(i) has issued a negotiable document in the name of the secured creditor; or

(ii) holds the goods on behalf of the secured creditor.

51. (1) For purposes of determining whether a security interest in a farm product exists, it does not matter whether the farm product is stored, kept, growing or grown, as the case may be, on any other land or premises.

Security interest in farm products

(2) A perfected security interest in a farm product is not extinguished or prejudicially affected by a subsequent sale, lease, mortgage or other encumbrance of, or upon, the land on which the farm product is stored, kept, growing or grown, as the case may be.

PART V

PRIORITY BETWEEN SECURITY INTERESTS AND OTHER INTERESTS

52. Priority between security interests is determined as follows:

Priority of security interests in same collateral

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

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

(i) the registration of a financing statement;

(ii) the secured creditor, or another person acting on the secured creditor's behalf, taking possession of the collateral; or

(iii) the secured creditor, or another person acting on the secured creditor's behalf, acquires control of the collateral; and

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

Same priority for original collateral and proceeds

53. The priority of a security interest in original collateral is the same priority that shall be accorded to its proceeds.

Transfer of security interest not to affect priority

54. A security interest that is transferred has the same priority as it had at the time of the transfer.

Voluntary subordination of priority

55. (1) A secured creditor may agree to subordinate the secured creditor's priority in favour of any other competing claimant.

(2) An agreement to subordinate a secured creditor's priority, as specified in subsection (1), is effective by registration of an amendment to the registered financing statement.

(3) An agreement to subordinate priority of a security interest does not adversely affect the rights of a party who is not a party to the agreement.

Priority in secured obligations and advances

56. A security interest has the same priority in respect of all secured obligations and advances, whether existing or future.

Priority of purchase money security interest in collateral or proceeds

57. (1) A purchase money security interest in collateral and its proceeds have priority over a non-purchase money security interest in the same collateral created by the same debtor if the purchase money security interest is perfected when the debtor receives the collateral.

(2) A purchase money security interest in inventory and their proceeds has priority over any other security interest in the same collateral given by the same debtor to a secured creditor only if the purchase money security interest is perfected before the debtor receives possession of the inventory and the secured creditor notifies any other secured creditor with a registered financing statement against inventory of its intention to take a purchase money security interest.

Priority between purchase money security interests

58. A purchase money security interest in goods or their proceeds taken by a seller, lessor or consignor of the collateral, has priority over any other purchase money security interest in the same collateral given by the same debtor to a secured creditor that is not a seller, lessor or consignor of that collateral.

<p>59. A purchase money security interest in fixtures has priority as against a third party which has existing rights in the immovable property provided that the financing statement is registered in the Collateral Registry before the third party acquires rights in the immovable property.</p>	<p>Priority of purchase money security interest in fixtures</p>
<p>60. A security interest in goods that is created and perfected before the goods become an accession has priority over a claim to the goods as an accession made by a person with an interest in the whole.</p>	<p>Priority of security interest in goods prior to accession</p>
<p>61. (1) A perfected security interest in goods that subsequently become part of a product or mass continues as a perfected security interest in the product or mass, if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass.</p>	<p>Priority of security interest in processed or commingled goods</p>
<p>(2) If more than one security interest is perfected in the goods before they become part of a product or mass, the security interests rank equally in proportion to the value of the goods at the time they became part of the product or mass.</p>	
<p>62. (1) A security interest in a bank account perfected by control has priority as against a competing security interest perfected by registration, irrespective of the time when control was acquired.</p>	<p>Priority of security interest in bank account</p>
<p>(2) If a bank or financial institution perfected its security interest by acquiring control automatically, such security interest has priority as against any other security interest in the bank account.</p>	
<p>63. If a debtor transfers an interest in collateral which, at the time of the transfer is subject to a perfected security interest, that security interest has priority over any other security interest created by the transferee.</p>	<p>Priority of security interest transferred by debtor</p>
<p>64. A recipient of money or funds from a bank account shall receive such money or funds free of a security interest, unless the recipient acts in collusion with a debtor in violating the rights of a secured creditor.</p>	<p>Priority of creditor who receives payment</p>
<p>65. A purchaser of a negotiable instrument, investment security or negotiable document has priority over a perfected security interest in the negotiable instrument, investment security or negotiable document if the purchaser—</p>	<p>Priority of purchaser of negotiable instrument, investment security or negotiable document</p>
<p>(a) gives value;</p>	

(b) acquires the negotiable instrument, investment security or the negotiable document without knowledge that the transaction is a breach of the security agreement to which the security interest relates; and

(c) takes possession of the negotiable instrument, investment security or the negotiable document.

Priority of interest of assignee of accounts receivable

66. (1) The rights of an assignee of an accounts receivable are subject to—

(a) the terms of the contract between the account debtor and the assignor and any defence or claim arising from the contract; and

(b) any other defence or claim of the account debtor against the assignor, including a defence by way of a right of set-off that accrues before the account debtor receives notification of the assignment.

(2) Subsection (1) does not apply if the account debtor has made an enforceable agreement not to assert defences to claims arising out of the contract.

Rights of buyer or lessee of goods

67. (1) A buyer or lessee who acquires goods for value and receives their possession, takes the goods free of an unperfected security interest.

(2) A buyer of goods sold in the ordinary course of business of the seller, and a lessee of goods leased in the ordinary course of business of the lessor, takes the goods free of a security interest created by the seller or lessor unless the buyer or lessee knows that the sale or the lease constitutes a breach of a security agreement under which the security interest was created.

Priority of lien over security interest relating to same goods

68. A possessory lien arising out of materials or services provided in the ordinary course of business in respect of goods that are subject to a security interest, has priority over the security interest but only up to the reasonable value of the materials or the services rendered.

Priority of judgment creditor and lien holder over unperfected security interest

69. (1) The interest of a judgment creditor, including a creditor whose lien arises by operation of law in any collateral has priority over any security interest in the same collateral if the security interest is unperfected at the time of execution.

(2) In this section, “time of execution” means—

(a) if the collateral is seized by or on behalf of an execution creditor, at the time of seizure;

(b) when the financing statement that relates to a judgment lien or lien arising by operation of the law is registered; or

(c) in any other case, the time when a court order is served on the person holding property for, or on behalf of, the debtor.

(3) The priority of an interest determined, in accordance with subsection (1), as against perfected security interests, is determined according to section *fifty-two*, and the time of execution is deemed to be the time of perfection.

(4) The priority of a security interest extends to credit disbursed by a secured creditor—

(a) before the expiry of thirty days after the judgement creditor or a creditor whose lien arose by operation of law has notified the secured creditor that it had taken the steps referred to in subsection (2); or

(b) pursuant to an irrevocable commitment to extend credit, if the commitment was made before the judgement creditor or a creditor whose lien arose by operation of law notified the secured creditor that it had taken the steps referred to in subsection (2).

PART VI

ENFORCEMENT OF SECURITY INTERESTS

70. (1) This Part applies to security interests created in accordance with this Act and does not apply to those security interests that are created or provided for by an outright transfer of an account receivable and operating lease.

Application
of Part

(2) In addition to the remedies available under this Act, a security agreement and any other remedy that may be granted by a court in accordance with the Companies Act, the Bankruptcy Act or any other law, a secured creditor may seek the appointment of a receiver, receiver and manager or official receiver, as the case may be, in accordance with those Acts.

Cap. 388
Cap. 82

71. A secured creditor shall, prior to enforcing the secured creditor's rights, register an enforcement notice, in the Collateral Registry, in the prescribed manner which shall identify the debtor, the secured creditor and the collateral against which enforcement is sought.

Registration
of
enforcement
notice

Secured creditor taking possession and disposing collateral

72. (1) A secured creditor may take possession, or without rendering the collateral unusable, remove the collateral or dispose of the collateral when the debtor is in default or the collateral is at risk.

(2) For purposes of subsection (1), collateral is at risk if the secured creditor has reasonable grounds to believe that the collateral has been or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold or otherwise disposed of contrary to the security agreement.

(3) A secured creditor may proceed under this section—

(a) pursuant to a judicial process; or

(b) without judicial process, if the debtor consented, in the security agreement, to relinquish possession without a court order.

(4) A secured creditor may require a debtor to assemble the collateral and make it available at a designated place.

(5) A prior notice to a debtor is not required for the secured creditor to repossess or render the collateral unusable under this section.

Secured creditor rendering collateral unusable

73. (1) A secured creditor may render collateral unusable, if the collateral is of a kind that cannot be readily moved from the debtor's premises or is of a kind where adequate storage facilities are not readily available.

(2) A secured creditor may dispose of collateral on the debtor's premises, except that it shall not cause the person in possession of the premises, if the person is not the debtor, any more inconvenience than is necessary.

Secured creditor applying collateral in satisfaction of secured obligation

74. (1) A secured creditor may collect and apply accounts receivable, money or a negotiable instrument taken as collateral to the satisfaction of the secured obligation if the debtor is in default.

(2) A secured creditor may notify the account debtor and collect payment, prior to default, if the parties so agree.

(3) If a bank or financial institution holds a security interest, in a bank account perfected automatically by control, it may apply the balance of the bank account to the secured obligation.

(4) If a secured creditor holds a security interest, held in a bank account which is perfected by a control agreement, the secured creditor may instruct the bank or financial institution to pay the balance of the bank account to the secured creditor.

<p>75. A secured creditor may dispose of collateral in its present condition or following a reasonable preparation or processing.</p>	<p>Disposal of collateral by secured creditor</p>
<p>76. A secured creditor shall obtain a reasonable price obtainable at the time of sale or other disposal of the collateral.</p>	<p>Duty of secured creditor disposing collateral</p>
<p>77. If the collateral is a negotiable document, the power to dispose provided by section <i>seventy-two</i> shall apply to the negotiable document and to the goods to which it relates.</p>	<p>Power of disposal in negotiable document and related goods</p>
<p>78. A secured creditor may dispose of the collateral by sale, lease, license, auction, public tender or any other method provided for in a security agreement.</p>	<p>Method of disposal of collateral</p>
<p>79. (1) A secured creditor shall, not less than fourteen days before disposal of the collateral, give notice in a prescribed form to the following persons:</p>	<p>Notice of disposal of collateral</p>
<p>(a) the debtor;</p> <p>(b) any other person who has registered a financing statement in respect of the collateral that became effective before the secured creditor repossessed the collateral; and</p> <p>(c) any other person that has given the secured creditor notice of an interest in the collateral.</p>	
<p>(2) Subsection (1) does not apply if—</p>	
<p>(a) the collateral may perish within fourteen days of the repossession;</p> <p>(b) the secured creditor reasonably believes that the collateral shall decline substantially in value if it is not disposed of immediately;</p> <p>(c) the cost of care and storage of the collateral is disproportionately large in relation to its value; or</p> <p>(d) the collateral consists of inventory or farm products.</p>	
<p>(3) If a security interest relates to collateral, specified in subsection (2), the secured creditor may dispose of the collateral but shall comply with subsection (1) with respect to the other collateral.</p>	

Extinguishment
of
subordinate
security
interest
after
disposal

80. (1) If collateral has been disposed of in accordance with this Part, all security interests in the collateral and its proceeds and other rights in the collateral that are subordinate to the security interest of the secured creditor, who disposed of the collateral, are extinguished on the disposal of the collateral.

(2) Where a collateral has been disposed of in accordance with subsection (1) and the security interest becomes extinguished, the secured creditor shall register the extinguishment in the prescribed form.

Secured
creditor to
give
statement of
account to
debtor

81. A secured creditor shall, within twenty-one days after the disposal of the collateral, provide a statement of account, in writing, to the persons listed in subsection (1) of section *seventy-nine*, indicating

(a) the amount of the gross proceeds of the disposal;

(b) the amount of the costs and expenses of enforcement; 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.

Distribution
of proceeds
after
disposal

82. (1) A secured creditor who has disposed of the collateral shall apply the net proceeds of the disposal towards the satisfaction of the secured obligation.

(2) For purposes of subsection (1), “net proceeds” means the proceeds of the disposal after deducting the reasonable costs and expenses of the secured creditor which are incidental to taking possession, holding, storing, repairing, maintaining, valuing or preparing the collateral for disposal.

(3) If a secured creditor has disposed of or retained collateral in satisfaction of a debt or otherwise disposed of the collateral, the secured creditor shall pay the following persons the amount of any surplus in the following order:

(a) any secured creditors or competing claimants subject to this Act, who have a subordinate security interest or claim in the order of their priority as provided in this Act; and

(b) the debtor.

(4) For the purposes of this Act, there is surplus when the net proceeds recovered after disposal of the collateral exceed the amount owed by the debtor to the secured creditor.

(5) A secured creditor may pay the surplus into court if there is a question as to who is entitled to receive payment.

(6) A debtor remains liable for any deficiency.

83. (1) A secured creditor may propose, after default, to retain collateral, other than consumer goods, in full satisfaction of the secured obligation.

Proposal and notice of retention

(2) A secured creditor shall give notice of the proposal, to retain collateral, to the persons who are entitled to receive a notice of sale of the collateral, as specified in section *seventy-nine*.

84. (1) A person who is entitled to receive a notice of retention and whose interest in the collateral would be adversely affected by a secured creditor's retention of the collateral shall, within fourteen days after the notification was received, serve a written notice of objection to the secured creditor and the secured creditor shall, upon receipt of the notice of objection, dispose of the collateral.

Objection to notice of retention

(2) If no notice of objection is received, the secured creditor shall, at the expiration of fourteen days, be considered to have elected to take the collateral in full satisfaction of the secured obligation.

(3) Upon retention of the collateral by the secured creditor, all subordinate security interests and claims in the collateral are extinguished.

(4) Where a secured creditor refuses to dispose of collateral, after receiving a notice of objection, a person entitled to receive a notice of retention may petition the court requesting that the collateral be disposed of in accordance with section *seventy-two*.

85. (1) At any time, before a secured creditor disposes of the collateral or takes the collateral in satisfaction of the secured obligation, a debtor or other secured creditor may redeem the collateral by—

Redemption of collateral by entitled persons

(a) fulfilling all of the obligations secured by the collateral; and

(b) paying any other reasonable expenses incurred by the secured creditor in relation to the collateral.

(2) A debtor's right to redeem the collateral has priority over any other person's right to redeem the collateral.

86. Subject to agreement with a secured creditor, a debtor may, at any time before the secured creditor disposes of or retains the collateral in satisfaction of the secured obligation, reinstate the security agreement by—

Debtor reinstating security agreement

(a) paying the sums actually in arrears, exclusive of the operation of an acceleration clause in the security agreement;

- (b) remedying any other default; and
- (c) paying a sum equal to the reasonable expenses incurred by the secured creditor in seizing, repossessing, holding, repairing, processing or preparing the collateral for disposal, if those expenses have actually been incurred by the secured creditor, and any other reasonable expenses incurred in enforcing the security interest.

PART VII

GENERAL PROVISIONS AND OFFENCES

Rights, duties and obligations to be exercised in good faith and commercial reasonableness

87. (1) All rights, duties or obligations that arise under a security agreement or this Act shall be exercised and discharged in good faith and in accordance with reasonable commercial standards.

(2) For the avoidance of doubt, a person is not considered to have acted in bad faith merely because the person acted with the knowledge that another person has rights in the collateral.

Amendment of financing statement to indicate content of commercial document

88. (1) Despite any other provision in this Act, a secured creditor may amend a registered financing statement to indicate an obligation or privilege arising from any other commercial document relating to a secured interest in collateral or arising from the operation of a written law.

(2) For purposes of any dispute relating to a registered financing statement or amendment to a registered financing statement, a court, tribunal or Alternative Dispute Resolution proceedings shall take judicial notice of any obligation or privilege arising from a commercial document, as specified in subsection (1), indicated in a registered financing statement or amendment of a registered financing statement.

Entitlement to damages for breach of obligation

89. (1) If a person fails to discharge any duty or obligation imposed by this Act, the person to whom the duty or obligation is owed, and any other person who can reasonably be expected to rely on performance of the duty or obligation, has a right to recover damages for any loss or damage that was reasonably foreseeable or likely to occur as a result of the failure.

(2) This section does not limit or affect any liability that a person may incur under any other law.

90. A person is not liable for any action in damages for anything done or omitted to be done by any person in the exercise or performance of any power or function conferred or imposed on the person by or under this Act, unless the act or omission was in bad faith or was due to want of reasonable care or diligence.

Exemption from liability for actions or omissions

91. (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) a written approval or correction of 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 the collateral, the secured creditor shall disclose the name and address of—

- (a) the immediate successor in interest or transferee; or
- (b) the latest successor in interest or transferee, if known.

(3) A secured creditor shall comply with the request within fourteen days of its receipt.

(4) A secured creditor who responds to a request, made in accordance with subsection (1), may charge the debtor only the reasonable costs for providing the information and the debtor shall be entitled to one response free of charge every three months.

92. (1) A document or notice to be served in accordance with this Act is considered sufficiently served if—

Service of documents or notices

- (a) it is delivered to a person or the person's authorised agent as designated in a security agreement;
- (b) it is left at that person or that person's agent's usual or last known place of abode or business or at an address specified for that purpose in a security agreement;

(c) it is posted in a letter addressed to the person or the person's agent by name at that place of abode, business or address; or

(d) it is delivered by facsimile, electronic mail or other similar means of communication.

(2) Where service in accordance with subsection (1) is not possible or if the parties have agreed otherwise, a document or notice may be served through registered mail.

(3) This section does not affect any provisions in this Act relating to the service of a document or notice or detract from the power of any court to direct how the service of any document or notice relating to legal proceedings before the court is done.

Fraudulent financing statement

93. A person who fraudulently lodges a financing statement commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Submission of frivolous, malicious, etc financing statement

94. A person who lodges a financing statement for registration with a frivolous, malicious or criminal purpose or intent commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units.

Falsification of entries in register

95. A person who—

(a) makes or causes to be made a false entry in the Collateral Registry;

(b) issues a false writing purporting such writing to be a copy of an entry in the Collateral Registry;

(c) produces, tenders or causes to be produced or tendered in evidence any false entry or writing, knowing the entry or writing to be false;

commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Altering of documents

96. A person who—

(a) alters or defaces;

(b) makes any additions to or partly removes; or

(c) erase or obliterates;

any document issued by the Registrar commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or imprisonment for a term not exceeding two years, or to both.

97. (1) A person who—

- (a) for the purpose of deceiving the Registrar or any other officer in the execution of this Act;
- (b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder; or
- (c) makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false;

Deceiving or influencing Registrar or officer

commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years or to both.

(2) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omitting to do anything in relation to this Act or any matter thereunder and who, on becoming aware that such statement or representation was false, fails to advise the Registrar forthwith of such falsity commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

98. (1) The Registrar may impose an administrative penalty on a person for a failure to comply with this Act.

Administrative penalty

(2) An administrative penalty referred to in subsection (1) may not exceed the amount prescribed by the Minister for each day during which such failure continues.

(3) An administrative penalty imposed under subsection (1) shall be paid to the Agency within the period specified by the Registrar.

(4) If any person fails to pay an administrative penalty, within the specified period under subsection (2), the Registrar 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 Agency.

99. Except as provided in this Act, a person who commits an offence under this Act is, on conviction, liable to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

General penalties

100. The Minister may, by statutory instrument, make regulations for—

Regulations

- (a) anything required to be prescribed under this Act;
- (b) for various fees relating to the registration and search processes stipulated in this Act; and
- (c) the better carrying out of the purposes of this Act.

Collateral
Registry
Office to be
reporting
entity Act
No. 46 of
2010

101. The collateral Registry Office is a reporting entity for the purposes of the Financial Intelligence Centre Act, 2010.

Savings and
transitional
provisions

102. The savings and transitional provisions in the Schedule apply for purposes of this Act.

SCHEDULE

(Section 102)

SAVINGS AND TRANSITIONAL PROVISIONS

1. This Act does not apply to a matter that is the subject of court, administrative or alternative dispute resolution proceedings that were commenced before its effective date.

Prior proceedings

2. (1) 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 (2).

Prior security interests continue to be effective during transitional period

(2) 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 six months after the effective date of this Act.

(3) 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 (2), the perfection shall be deemed to be continuous.

(4) A prior security interest that is not perfected under this Act within the period specified in subsection (2), shall be deemed to be an unperfected security interest thereafter.

(5) For purposes of this Part, “prior security interest” means an interest created or provided for by an agreement or other transaction that was made or entered into before the commencement of this Act and that had not been terminated before the commencement of this Act.

3. (1) This Act applies to priorities of competing security interests whether perfected under this Act or under any other law.

Act to govern priority conflicts

(2) The priority of a prior security interest is calculated from the date that it was perfected or made effective against third parties under any other law.
