



NEW SECURITY INTEREST IN MOVABLE PROPERTY ACT MAY REQUIRE RE-REGISTRATION OF EXISTING SECURITIES

The Security Interest in Movable Property Act, 2019 (the “Act”) and the Security Interest in Movable Property Regulations, 2019 (the “Regulations”) came into force on 30th May 2019. This Act is one of the most significant statutes to impact the taking of security in Uganda.

The Act is far reaching as it requires many types of existing securities that have already been registered to be re-registered under the Act for the security to be effective against a liquidator, administrator or third parties.

Purpose of the Act

The Act and the Regulations facilitate the use of movable property as collateral for credit, provide for the creation and perfection of security interests, provide for rules determining the priority of claims among competing claimants, establish the Register of Security Interests in Movable Property as well as provide for enforcement of security interests, search of the register and related matters.

“Collateral” is defined in the Act as a movable asset that is subject to a security interest.

“Movable Property” is broadly defined in the Act to include goods, tangible assets (meaning personal property that can be completely transferred by delivery or property in respect of which a valid document of title exists),

For an agreement to be valid and enforceable under the Act, the following requirements must be fulfilled. a) the grantor or the owner must have a right in the collateral or the power to encumber the collateral; b) The agreement must describe the secured obligation in a manner that reasonably allows its identification, whether pre-existing, present or future, determined, or determinable, conditional or unconditional, fixed or fluctuating or a line of credit; describe the collateral in a manner that reasonably allows its identification; identify the secured creditor and the grantor; be signed by the grantor; be witnessed by a third party; and indicate the maximum amount for which the security interest is enforceable. c) In addition, the secured creditor is required to give the collateral a monetary value.

The Act further establishes a Register of Security Interest in Movable Property which is found on the electronic Security Interest in Movable Property Registry System (“SIMPRS”). The Register shall be maintained as an electronic record system and it shall specify the nature of the security interest registered and details of the personal property over which the security interest is created. It shall also reflect the date and time when the information is entered in the register.

The Act repeals the Chattels Security Act, 2014.

Prior Security Rights

intangible assets (which means accounts receivable, deposit accounts, electronic securities and intellectual property), investment securities, money, negotiable instruments, and documents of title.

Key Highlights of the Act and the Regulations

The Act applies to security rights in movable property where the movable property falls under one of the following categories; a tangible asset located in Uganda; an intangible asset, where the grantor of the asset is located in Uganda; a tangible or intangible asset which is ordinarily used outside Uganda, where the grantor of the asset is located in Uganda; a movable property attached to immovable property.

The Act also applies to security interests in movable property where: the collateral is a deposit account maintained in a financial institution that has a place of business in Uganda; the transaction involves a movable property that secures a payment or the performance of an obligation, including a floating charge, a fixed charge, a pledge, a debenture, a warehouse receipt and any other transaction that secures the payment or performance of an obligation with movable property; the security interest is a lien in movable property created by a judgement of court; and the security interest is for the sale of accounts receivable, commercial consignments and for the lease of goods for more than one year.

This Act does **not** apply to: (a) the creation, lease or transfer of an interest in immovable property; (b) a sale of accounts receivable as part of the sale of a business out of which the accounts receivable arose; (c) the assignment of accounts receivable where the assignment is only for the purpose of collection action; and (d) the transfer of a claim for compensation of an employee.

A prior security right that was effective against third parties under the prior laws will continue to be effective against third parties until the earlier of;

(a) the time it would have ceased to be effective against third parties under any other law; or

(b) the expiration of a period of one hundred and fifty calendar days after the effective date of the Act. This date was the 28th of October 2019.

What this means is that banks and other financial institutions holding securities such as debentures or chattels mortgages that had already been registered will need to register their rights on the SIMPRS as soon as possible. This is because the determination of priority ranking will now be based on date and time of registration on SIMPRS.

So what's next?

The holders of existing security interest will need to create profiles on the SIMPRS. This is accessible at <http://simpo.ursb.go.ug/Account/Login>. Where the holder of security is not based in Uganda, they may consider appointment of an agent in Uganda to register their interest and thus enable enforcement of their security.

Although the Act has a mandatory provision requiring reregistration of all existing securities over movable property which would impact the priority ranking of previously perfected instruments such as debentures, the Uganda Registration Services Bureau has advised that the requirement to reregister is being considered on account of its potential effect of retrospectively negating the ranking of security validly created under Part IV (Registration of Charges) of the Companies Act, 2012 which has not been repealed.

Should you have any queries or need any clarifications with respect to the above, please do not hesitate to contact the persons below.



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