

BILL

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THE BORROWERS AND LENDERS ACT, 2019

ARRANGEMENT OF SECTIONS

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MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to repeal and replace the Borrowers and Lenders Act, 2014 (Act No. 13 of 2014), to broaden the scope of the Collateral Registry to include the registration of encumbrances in immovable assets, to provide for lenders who are not licensed and supervised by the Bank to be able to take and register their security interests.

This Bill is divided into nine parts-

Part I - PRELIMINARY provides for the interpretation and definitions of certain terms and expressions in the Bill and the application of the Act.

Part II-PARTY AUTONOMY AND COMMERCIAL REASONABLENESS provides for party autonomy and commercial reasonableness.

Part III - CREATION OF A SECURITY INTEREST provides for the creation of a security interest in movable and immovable property.

Part IV - PERFECTION OF A SECURITY INTEREST provides for the perfection of a security interest in a collateral by registration of a notice of the security interest in the Collateral Registry.

Part V - THE COLLATERAL REGISTRY provides for the establishment of the collateral registry and appointment of the Registrar who shall be responsible for the registration of notices, amendments and cancellations of security interests in movable and immovable property.

Part VI - PRIORITY OF A SECURITY INTEREST provides for priority between security interests that were perfected by registration of a notice in the Collateral Registry determined by the order of registration, without regard to the order of their creation.

Part VII- RIGHTS AND OBLIGATIONS OF THE PARTIES AND THIRD-PARTY OBLIGORS provides for the rights and obligations of the parties to a security agreement and third party obligors.

Part VIII- ENFORCEMENT OF A SECURITY AGREEMENT provides for the enforcement of a security interest by the lender upon default of the debtor.

Part IX - MISCELLANEOUS contains miscellaneous provisions.

MADE this 16th day of January, 2019

JACOB JUSU SAFFA

Minister of Finance



No.

2019

Sierra Leone

A BILL ENTITLED

The Borrowers and Lenders Act, 2019

Being an Act to provide for the repeal and replacement of the Borrowers and Lenders Act, 2014 (Act No. 13 of 2014), to provide for the broadening of the scope of the Collateral Registry to include the registration of encumbrances in immovable assets, to provide for lenders who are not licensed and supervised by the Bank of Sierra Leone to be able to register their security interests and for other related matters. Short title.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I – PRELIMINARY

Definition.

1. In this Act, unless the context otherwise requires–

"attachment to immovable" means a tangible asset that is so physically attached to immovable property that an interest in it arises under immovable property law;

"Bank" means the Bank of Sierra Leone established under section 4 of the Bank of Sierra Leone Act, 2011 (Act No. 15 of 2011);

"bank account" means an account maintained by an authorised deposit taking institution for another person to which funds may be credited or debited;

"borrower" means–

- (a) a person that creates a security interest to secure either its own obligation or that of another person;
- (b) a buyer or other transferee of the collateral that acquires its rights subject to a security interest; and
- (c) a transferor under an outright transfer of a receivable by agreement;

"certificated securities," means securities represented by a certificate that –

- (a) provides that the person entitled to the securities is the person in possession of the certificate; or
- (b) identifies the person entitled to the securities;

"collateral" means–

- (a) movable property that is subject to a security interest, including a receivable that is the subject of an outright transfer by agreement; and
- (b) immovable property that is subject to a security interest;

"Collateral Registry" means the Collateral Registry established under section 18;

"competing claimant" means a creditor or other person with rights in the collateral that may be in competition with the rights of a lender in the same collateral, including–

- (a) another lender that has a security interest in the same collateral;
- (b) another creditor that has a right in the same collateral;
- (c) the insolvency representative in insolvency proceedings in respect of the borrower; or
- (d) a buyer or other transferee, lessee or licensee of the collateral;

"consumer goods" mean goods primarily used or intended to be used by the borrower for personal, family or household purposes;

"debtor" means a person that owes payment or other performance of a secured obligation, whether or not that person is the borrower, including a secondary obligor such as a guarantor of a secured obligation;

"debtor of a receivable" means a person that owes payment of a receivable that is subject to a security interest, including a guarantor or other person secondarily liable for payment of the receivable;

"default" means the failure of a debtor to pay or otherwise perform a secured obligation and any other event that constitutes default under the terms of an agreement between a borrower and a lender;

"encumbrance" means any right or interest that exists in someone other than the owner of an estate and that restricts or impairs the transfer of the estate or lowers its value;

"equipment" means a tangible asset other than inventory or consumer goods that is primarily used or intended to be used by the borrower in the operation of his business;

"farm products" include-

- (a) crops grown, growing and to be grown;
- (b) livestock, born or unborn;
- (c) supplies used or produced in a farming operation; and
- (d) products of crops or livestock in their unmanufactured states;

"financial contract" means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, equities, bonds, indices or any other financial instrument, any securities repurchase or lending transaction, and any other transaction similar to those transactions entered into in financial markets and any combination of those transactions;

"future asset" means movable property which does not exist or which the borrower does not have rights in or the power to encumber at the time the security agreement is concluded;

"immovable property" includes all land, whether covered with water or otherwise, together with all buildings if any, thereon;

"inventory" means goods that are-

- (a) held by a person for sale or lease;
- (b) to be provided under a contract for services;
- (c) raw materials or work in progress; and
- (d) materials used or consumed in a business;

"intermediated securities" mean securities credited to a securities account maintained by an intermediary;

"knowledge" means actual knowledge;

"lease intended as a security interest" means a lease of a tangible asset which, at the end of the lease-

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

"lender" means-

- (a) a person that has a security interest; and
- (b) a transferee under an outright transfer of a receivable by agreement;

"mass" means a tangible asset which is commingled with one or more other tangible assets of the same kind that have lost their separate identity;

"Minister" means the Minister responsible for Finance;

"money" means currency authorised as legal tender by any State;

"movable property" means a tangible or intangible asset, other than immovable property;

"non-consensual creditor" means a creditor that has acquired a right in the collateral other than by a contract, including a judgment creditor and a tax authority;

"notice" means a communication in writing;

"notification of a security interest in a receivable" means a notice by the borrower or the lender informing the debtor of the receivable that a security interest has been created in the receivable;

"possession" means the actual possession of a tangible asset by a person or his representative, or by an independent person that acknowledges holding it for that person;

"priority" means the right of a person in the collateral in preference to the right of a competing claimant;

"prior law" means the law applicable to prior security interests immediately before the entry into force of this Act;

"proceeds" means whatever is received in respect of the collateral, including what is received as a result of sale or other transfer, lease, licence or collection of the collateral, civil and natural fruits, insurance proceeds, claims arising from defects in, damage to or loss of the collateral, and proceeds of proceeds;

"product" means a tangible asset which results when a tangible asset is so physically associated or united with one or more other tangible assets of a different kind, or when one or more tangible assets are so manufactured, assembled or processed, that they have lost their separate identity;

"purchase money security interest" means a security interest in a tangible asset, in intellectual property or its licence, which secures an obligation to pay any unpaid portion of the purchase price of an asset, or other credit extended to enable the borrower to acquire rights in the asset to the extent that the credit is used for that purpose;

"receivable" means a right to payment of a monetary obligation, excluding a right to payment evidenced by a negotiable instrument, a right to payment of funds credited to a bank account and a right to payment under a security;

"Registrar" means the Registrar of the Collateral Registry appointed under subsection (2) of section 18;

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

"security agreement" means-

- (a) an agreement, between a borrower and a lender that provides for the creation of a security interest; and
- (b) an agreement that provides for the outright transfer of a receivable;

"security certificate," means a certificate that represents that the person entitled to the security is the person in possession of the certificate or identifies the person entitled to the security;

"security interest" means-

- (a) a property right in movable or immovable property that is created by an 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 the borrower or lender, or the nature of the secured obligation; and
- (b) the right of the transferee under an outright transfer of a receivable by agreement;

"serial number" means the serial number located on the chassis or body frame of a movable property;

"serial-numbered asset" means a motor vehicle or a trailer that has a serial number permanently marked on or attached by the manufacturer; and

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

2. In this Act, unless the context otherwise requires-

Interpretation.

The law applicable -

- (a) to the mutual rights and obligations of the borrower and the lender arising from their security agreement is the law chosen by them and, in the absence of a choice of law, the law governing the security agreement.
- (b) to the creation, perfection and priority of a security interest -
 - (i) in a tangible asset, is the law of the State in which the asset is located;
 - (ii) in a tangible asset of a type ordinarily used in more than one State, is the law of the State in which the borrower is located;
 - (iii) in an intangible asset, is the law of the State in which the borrower is located; and
 - (iv) in immovable property, is the law of the State in which the property is located.
- (c) to issues relating to the enforcement of a security interest in -
 - (i) a tangible asset, is the law of the State in which the asset is located at the time of commencement of enforcement;
 - (ii) an intangible asset, is the law applicable to the priority of the security interest; and

- (iii) immovable property, is the law of the State in which the property is located.
- (d) to the creation of a security interest in proceeds, is the law applicable to the creation of the security interest in the original collateral from which the proceeds arose.
- (e) to the perfection and priority of a security interest in proceeds, is the law applicable to the perfection and priority of a security interest in an original collateral of the same kind as the proceeds.
- (f) to the rights and obligations between a debtor of a receivable, an obligor under a negotiable instrument or an issuer of a negotiable document and the borrower, is the law applicable to -
 - (i) the rights and obligations between the lender and the debtor, obligor or issuer;
 - (ii) the conditions under which the security interest may be invoked against the debtor, obligor or issuer, including whether an agreement limiting the borrower's right to create a security interest may be asserted by the debtor, obligor or issuer; and
 - (iii) the obligations of the debtor, obligor or issuer have been discharged.
- (g) in a security interest in a right to payment of funds credited to a bank account and intermediated securities, as well as to the

- rights and obligations between the deposit-taking institution or the intermediary and the lender, is the law of the State in which the deposit taking institution or the intermediary maintaining the securities account has its place of business and where the deposit taking institution or the intermediary has places of business in more than one State, the law applicable is the law of the State in which the office maintaining the account is located.
- (h) to a securities interest in equity securities and debt securities, is the law under which the issuer is constituted.

A borrower is deemed to be located -

- (a) in the State in which he has his place of business;
- (b) in the State in which the central administration of the borrower is exercised, if the borrower has a place of business in more than one State; and
- (c) in the State in which the borrower has his habitual residence, if the borrower does not have a place of business.

Reference to the location of a collateral or of a borrower is reference-

- (a) to the location at the time of the putative creation of the security interest, for creation issues; and
- (b) to the location at the time when the issue arises, for third-party effectiveness and priority issues:

Provided that if the right of a lender in a collateral is created and perfected and the rights of all competing claimants are established before a change in the location of the collateral or the borrower, references to the location of the asset or of the borrower refer, with respect to perfection and priority issues, to the location prior to the change.

The commencement of insolvency proceedings in respect of the borrower does not displace the law applicable to a security interest.

Matters that are the subject of proceedings commenced before the entry into force of this Act

In this Act -

"prior security interest" means a right created by an agreement entered into before the entry into force of this Act as a security interest within the meaning of this Act and to which this Act would have applied if it had been in force when the right was created; and

"prior law" means the law applicable under the conflict-of-laws rules of Sierra Leone that applied to prior security interests immediately before the entry into force of this Act.

Prior law applies to a matter that is the subject of proceedings before a Court of competent jurisdiction or arbitral tribunal commenced before the entry into force of this Act.

Any step taken to enforce a prior security interest before the entry into force of this Act, the lender may continue enforcement under prior law or may proceed under this Act.

Applicability of prior law to the creation of a prior security interest.

Prior law shall determine whether a prior security interest was created.

A prior security interest remains effective between the parties notwithstanding that its creation did not comply with the creation requirements of this Act.

Transitional rules for determining the perfection of a prior security interest

A prior security interest perfected under prior law on the coming into operation of this Act continues to be perfected under this Act until the earlier of -

- (a) the time it would have ceased to be perfected under prior law;
- (b) with respect to movable property, the expiration of 6 months after the entry into force of this Act; and
- (c) for immovable property, the expiration of 12 months after the entry into force of this Act.

If the perfection requirements of this Act are satisfied before the perfection of a prior security interest ceases, the prior security interest continues to be perfected under this Act from the time it was perfected under prior law.

If the perfection requirements of this Act are not satisfied before the perfection of a prior security interest ceases, the prior security interest is perfected only from the time it is perfected under this Act.

A written agreement between a borrower and a lender creating a prior security interest is sufficient to constitute authorisation by the borrower for the registration of a notice covering the assets described in that agreement under this Act.

The priority of a prior security interest as against the rights of competing claimants arising under prior law

The priority of a prior security interest as against the rights of a competing claimant is determined by prior law if -

- (a) the security interest and the rights of all competing claimants arose before the entry into force of this Act; and
- (b) the priority status of none of these rights has changed since the entry into force of this Act.

The priority status of a prior security interest has changed only if-

- (a) it was perfected when this Act entered into force but ceased to be perfected; or
- (b) it was not perfected under prior law when this Act entered into force, and only became perfected under this Act.

General applicability of this Act.

3. (1) Except as otherwise provided, this Act applies to -
- (a) all security interests, including prior security interests within its scope;
 - (b) security interests in movable and immovable property, including -
 - (i) any transaction that secures payment of performance of an obligation, without regard to its form and without regard to the person who owns the collateral;
 - (ii) reservation of ownership;

(iii) transfer of ownership for security purposes, by naming the transferee as the owner or co-owner;

(iv) lease intended as a security interest;

(v) fiduciary and security assignment of receivables;

(vi) floating and fixed charges;

(vii) pledges; and

(viii) contractual liens.

(c) outright transfers of receivables by agreement;

(d) the rights of non-consensual creditors.

(2) This Act shall not apply to security interests in-

(a) ships registered under section 9 of the Merchant Shipping Act 2003 (Act No. 3 of 2003);

(b) aircraft registered under section 48 of the Civil Aviation Act 2017 (Act No. 8 of 2017);

(c) assignment of wages, pensions, health and similar benefits under the National Social Security and Insurance Trust Act, 2001 (Act No. 5 of 2001);

(d) contracts of annuity or life policy of insurance; and

(e) transfers of right to damages in tort not related to commercial activity.

PART II-PARTY AUTONOMY AND COMMERCIAL
REASONABLENESS

Party
autonomy.

4. (1) With the exception of sections 2, 5, 6, 12, 54, 55, and subsection (3) of section 64, this Act may be deviated from or varied by agreement.

(2) An agreement under subsection (1) shall not affect the rights or obligations of any person that is not a party to the agreement.

(3) Before default, a borrower or debtor may not waive unilaterally or vary by agreement any of his rights under Part VIII.

(4) Nothing in this Act prevents the use of alternative dispute resolution, including arbitration, mediation, conciliation and online dispute resolution.

General
standards
of conduct.

5. A person shall exercise his rights and perform his obligations under this Act in good faith and in a commercially reasonable manner.

PART III - CREATION OF A SECURITY INTEREST.

Creation of
security
interest.

6. (1) A security interest is created by a security agreement where the borrower -

- (a) has rights in the asset to be encumbered or the power to encumber it;
- (b) acquires rights in a future asset or the power to encumber it.

(2) A security agreement under subsection (1), shall-

- (a) be in writing;
- (b) state the identity of the lender and the borrower;

(c) describe the collateral and secured obligation in a manner that reasonably allows their identification; and

(d) be signed by the borrower.

(3) A security agreement under subsection (1) shall not be invalidated by the non-payment of stamp duty or any other tax.

(4) A security interest may encumber any type of movable or immovable property.

7. (1) A lender with a security interest in a receivable or other intangible asset or in a negotiable instrument has the benefit of any personal or property right that secures or supports payment or other performance of the collateral without a new act of transfer.

Personal or
property
rights
securing or
supporting
payment or
other per-
formance.

(2) Where the right under subsection (1) is transferable under the law governing it, only with a new act of transfer, the borrower is obliged to transfer the benefit of that right to the lender.

8. A security interest in a right to payment of funds credited to a bank account is effective notwithstanding an agreement between the borrower and the deposit taking institution limiting in any way the borrower's right to create a security interest.

Rights to
payment
of funds
credited to a
bank account.

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

Tangible
assets
covered by
negotiable
documents.

Tangible assets with respect to which intellectual property is used.

10. A security interest in a tangible asset with respect to which intellectual property is used does not extend to the intellectual property and a security interest in the intellectual property does not extend to the tangible asset.

Creation of security interest in receivables.

11. (1) A security interest in a receivable is effective notwithstanding any agreement between the initial or any subsequent borrower and the debtor of the receivable or lender limiting in any way the borrower's right to create a security interest.

(2) Nothing in this section affects any obligation or liability of the borrower for breach of the agreement under subsection (1), but the other party to the agreement may not avoid the contract giving rise to the receivable or the security agreement on the sole ground of the breach of that agreement, or raise against the lender any claim it may have as a result of such a breach against the borrower.

(3) This section shall apply to receivables-

- (a) arising from a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of immovable property; and
- (b) arising from a contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information.

Description of collateral and secured obligations.

12. (1) A collateral and secured obligations shall be described in the security agreement in a manner that reasonably allows their identification.

(2) A description of the collateral under subsection (1) shall indicate that the collateral consists of all the borrower's movable property, or of all the borrower's movable property within a generic category.

(3) A description reasonably identifies the collateral by-

- (a) specific listing;
- (b) category;
- (c) a type of collateral defined in this Act; or
- (d) quantity.

(4) Immovable property shall be described as prescribed in the Regulations.

(5) A description of the secured obligations under subsection (1) shall indicate that the security interest secures all obligations owed to the lender at any time, including an indication of the maximum amount for which the security interest may be enforced.

13. A security interest in a tangible asset that is -

- (a) commingled in a mass extends to the mass and is limited to the same proportion of the mass that the quantity of the collateral bore to the quantity of the entire mass immediately after the commingling;
- (b) transformed into a product extends to the product and is limited to the value of the collateral immediately before it became part of the product.

Tangible asset commingled in a mass or transformed into a product.

14. (1) A security interest in collateral extends to its identifiable proceeds.

(2) Where proceeds in the form of money or funds credited to a bank account are commingled with other assets of the same kind-

Rights to proceeds and commingled funds.

- (a) the security interest extends to the commingled money or funds, notwithstanding that they have ceased to be identifiable;
- (b) the security interest in the commingled money or funds is limited to the amount of money or funds immediately before they were commingled; and
- (c) if at any time after the commingling, the amount of the commingled money or funds is less than the amount of the money or funds immediately before they were commingled, the security interest in the commingled money or funds shall be limited to the lowest amount between the time when the money or funds were commingled and the time when the security interest is claimed.

PARTIV - PERFECTION OF A SECURITY INTEREST

Perfection of security interest in collateral.

15. (1) A security interest in collateral is perfected if a notice of a security interest is registered in the Collateral Registry.
- (2) Where a notice of a security interest in an asset is registered under subsection (1), a security interest in any proceeds -
- (a) is perfected without any further act if the proceeds are in the form of money, receivables, negotiable instruments or rights to payment of funds credited to a bank account;
 - (b) other than the types of proceeds referred to in paragraph (a) is perfected-

- (i) for a period of 15 working days after the proceeds arise; and
- (ii) thereafter, only if the security interest in the proceeds is perfected by registration of an amendment notice before the expiry of the time period specified in subparagraph (i).

16. Where a security interest in a tangible asset is perfected under subsection (1) of section 15, a security interest in a mass or product to which the security interest in tangible assets commingled in a mass or transformed into a product is perfected without any further act.

Perfection of security interest in tangible asset commingled in a mass or transformed into a product.

17. (1) A security interest perfected under the law of another State shall remain perfected, if the security interest is perfected in accordance with this Act -

Continuity of perfection upon change of applicable law.

- (a) if the perfection in the other State has not lapsed; and
- (b) before the expiry of 15 working days after this Act becomes applicable.

(2) Where a security interest continues to be perfected under subsection (1), the time of perfection is the time when it was perfected under the law of the other State.

PARTV - THE COLLATERAL REGISTRY

18. (1) The Bank shall establish and maintain a Collateral Registry as a unit or department within the Bank which shall be responsible for the registration of notices relating to security interests in movable and immovable property as a public record.

Establishment of Collateral Registry.

(2) The Bank shall appoint a Registrar on terms and conditions specified in the letter of appointment and the Registrar shall be responsible for the management of the Collateral Registry.

(3) Nothing in this Act -

(a) shall affect the registration requirements prescribed by any law, other than those relating to perfecting or establishing the priority for the security interest;

(b) relieves a company from the registration of security interests for the purposes of complying with the reporting responsibilities under sections 170-179 of the Companies Act, 2009 (Act No. 5 of 2009) and to maintain its own register of security interests, including charges and debentures as prescribed in sections 163-169 of the Companies Act, 2009 (Act No. 5 of 2009)

(4) The Registrar shall submit to the Corporate Affairs Commission records of all notices relating to security interests registered in the Collateral Registry against borrowers who are companies incorporated under the Companies Act, 2009.

(5) The fees for the services of the Collateral Registry shall be prescribed in the Regulations made under this Act.

Information required in initial notice.

19. An initial notice for the registration of a security under subsection (1) of section 15 shall contain the following information in the relevant designated field -

(a) the identifier, name and address of the borrower;

(b) the identifier, name and address of the lender or his representative;

(c) description of the collateral under section 26;

(d) period of effectiveness of the registration; and

(e) any other information as may be required by the Registrar.

20. Except for provisions in this Act which relate to perfection of security interests or establishing the priority for the security interest, nothing in this Act shall affect the rights and duties of parties with respect to the registration requirements under -

Effect of Act on other registries.

(a) the Registration of Instruments (CAP 256) and

(b) the Companies Act, 2009 (Act No. 5 of 2009);

21. (1) The registration of -

Borrowers authorisation for registration.

(a) an initial notice of a security interest in an asset of a borrower;

(b) an amendment notice that adds collateral or extends the period of effectiveness of the registration of a notice;

(c) an amendment notice that adds a borrower, is ineffective unless authorised by the borrower in writing.

(2) The authorisation of a borrower under subsection (1), may be given before or after the registration of an initial or amendment notice.

(3) A written security agreement shall be sufficient to constitute authorisation by the borrower for the registration of an initial or amendment notice covering the collateral described in that security agreement.

(4) The Registry may not require evidence of the existence of the borrower's authorisation

Single notice sufficient for multiple security Interests. 22. The registration of a single notice of a security interest is sufficient for multiple security interests created under one or more security agreements.

Advance registration. 23. A notice of a security interest may be registered before the conclusion of a security agreement.

Conditions for access to registry services. 24. (1) A person who wishes to register a notice or request a search shall submit to the Registrar -
 (a) the notice or a search request in the prescribed form;
 (b) identification details of himself in the prescribed manner; and
 (c) pay the prescribed fee.

(2) Where access to registry services under subsection (1) is refused, the Registrar shall communicate the reason for the refusal to the registrant or searcher without delay.

Rejection of registration notice or search request. 25. (1) The Registrar shall reject the registration of a notice if no information is entered in one of the mandatory designated fields or the information entered in one of the mandatory designated fields is illegible.

(2) The Registrar shall reject a search request if no information is entered in one of the fields designated for entering a search criterion or information entered in one of the fields designated for entering a search criterion is illegible.

(3) Except as provided in subsection (1) or (2), the Registrar may not reject the registration of a notice or a search request.

(4) Where the registration of a notice or a search request under subsection (1) is rejected, the Registrar shall communicate the reason to the registrant or searcher without delay.

26. (1) A collateral shall be described in an initial or amendment notice in a manner that reasonably allows its identification. Description of collateral in initial or amendment notice.
 (2) A description under subsection (1) is sufficient if it states -

- (a) that the collateral consists of all of the borrower's movable property or of all of the borrower's movable property within a generic category; or
- (b) the serial number, the make and the name of manufacturer of the serial-numbered asset, unless it is held as inventory.

(3) Immovable property shall be described as prescribed in the Regulations made under this Act.

27. The registration of an initial or amendment notice is effective from the date and time when the information in the notice is entered into the registry record so as to be accessible to searchers of the public registry record. Time of effective registration of notice.

28. (1) The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field of the notice. Period of effective registration of notice.

(2) The period of effectiveness of the registration of an initial notice may be extended before its expiry by the registration of an amendment notice providing for an extension.

29. (1) After the registration of a notice, the Collateral Registry shall send to the registrant, a copy of the information in the registered notice without delay. Obligation to send copy of registered notice.

(2) Within 15 working days after the registrant receives a copy of the information in the notice under subsection (1), the registrant shall send it to the borrower.

(3) The failure of a registrant to comply with his obligation under subsection (2) shall not affect the effectiveness of the registration of the related notice.

Right to register amendment or cancellation notice.

30. (1) Subject to subsection (2), a person identified in a registered initial notice as the lender may register an amendment or cancellation notice relating to that notice.

(2) After registration of an amendment notice changing the person identified in an initial or amendment notice as the lender, the person identified in the amendment notice as the new lender may register an amendment or cancellation notice.

Compulsory registration of amendment or cancellation notice.

31. (1) A lender shall register an amendment notice deleting a collateral described in a registered notice if -

- (a) the borrower had not authorised the registration of a notice in relation to the assets and the lender had been informed by the borrower that he will not authorise the registration;
- (b) the security agreement to which the registered notice relates had been revised to release the assets from the security interest and the borrower had not otherwise authorised the registration of a notice covering those assets; or
- (c) the borrower authorised the registration of a notice covering the assets but the authorisation had been withdrawn and no security agreement covering those assets had been concluded.

(2) A lender shall register a cancellation notice if -

- (a) the registration of the initial notice was not authorised by the borrower and the lender has been informed by the borrower that it will not authorise the registration of the initial notice;
- (b) the registration of the initial notice was authorised by the borrower but the authorisation has been withdrawn and no security agreement has been concluded; or
- (c) the security interest to which the initial notice relates has been extinguished.

(3) Where the lender does not comply with the borrower's request within 15 working days after its receipt, the borrower may seek an order for the registration of an amendment or cancellation notice through a judicial or administrative procedure.

32. The registration of an amendment or cancellation notice is ineffective unless authorised by the person entitled to register it under section 30.

Effectiveness of registration of an amendment or cancellation notice.

33. A search of the public registry record may be conducted according to-

Search criteria.

- (a) the identifier of the borrower; or
- (b) the serial number of serial-numbered assets.

34. (1) Upon submission of a search request under subsection (1) of section 24, the Registrar shall provide a search result that indicates-

Search results.

- (a) the date and time when the search was performed;

- (b) all information in each registered notice that contains information exactly matching the search criterion; or
- (c) that no registered notice contains information matching the search criterion exactly.

(2) Upon request by a searcher, the Registrar shall issue an official search certificate setting out the search result and certifying that it was issued by the Registrar.

(3) A written search result that purports to have been issued by the Collateral Registry is proof of its contents in the absence of evidence to the contrary.

Registrant errors in required information.

35. (1) An error in the identifier of the borrower shall render the registration of the notice ineffective.

(2) An error in the identifier of the borrower that renders the registration of a notice ineffective under subsection (1) shall not render the registration of the notice ineffective with respect to other borrowers correctly identified in the notice.

(3) An error in information required to be entered in an initial or amendment notice other than the borrower's identifier shall not render the registration ineffective unless the error would seriously mislead a reasonable searcher.

(4) An error in the description of the collateral that renders the registration of a notice ineffective with respect to that asset does not render the registration of the notice ineffective with respect to other collateral sufficiently described in the notice.

(5) An error in the serial number of the serial-numbered asset renders the registration ineffective as against a buyer or lessee of that asset.

36. (1) Subject to subsections (2) and (3), the perfection and priority of a security interest that has been perfected by registration of a notice is not affected by a change in the identifier of the borrower after the notice has been registered. Post-registration change of borrowers identifier.

(2) Where the identifier of the borrower changes after a notice is registered, a competing security interest created by the borrower that was perfected after the change has priority over the security interest to which the notice relates, unless an amendment notice disclosing the new identifier is registered-

- (a) before the expiry of 60 working days after the change; or
- (b) before the competing security interest is perfected.

(3) Where the identifier of the borrower changes after a notice is registered, a buyer to whom the collateral is sold after the change acquires his right free of the security interest to which the notice relates, unless an amendment notice disclosing the new borrower is registered-

- (a) before the expiry of the period under paragraph (a) of subsection (2); or
- (b) after the expiry of the period under paragraph (a) of subsection (2), before the buyer acquires his rights in the asset.

37. The perfection and priority of a security interest in collateral that is perfected by registration of a notice is not affected by a asset transfer of collateral. Post-registration transfer of collateral.

38. (1) The Registrar shall assign a registration number to a notice and organise the registry record so that all registered and cancellation notices that contain that number are initial notice in the registry record. Organization of initial information in amendment the registry associated with the record.

(2) The Registrar shall organise the registry record so that the information in a registered initial notice and in any associated registered notice can be retrieved by a searcher of the registry record that uses the correct identifier of the borrower as the search criterion.

(3) The Registrar shall organize the registry record so that a person may register a single amendment notice to amend his identifier, address or both in multiple registered notices in which that person is identified as the lender.

(4) Upon registration of an amendment or cancellation notice, the Registrar may not amend or remove information contained in any associated registered notice from the registry record.

Integrity of information contained in registry.

39. (1) Except as provided in subsection (3) of section 31 and section 40, the Registrar shall not amend or remove information in a registered notice from the registry record.

(2) The Registrar shall preserve all information contained in the registry record and reconstruct the registry record in the event of loss or damage.

Removal of information from the public registry and the archival.

40. (1) The Registrar shall remove information in a registered notice from public registry record upon the expiry of the period of effectiveness of registration of a notice.

(2) The Registrar shall archive information removed from public registry record under subsection (1) for 10 years in a manner that enables the information to be retrieved by the Registry.

Collateral prescribed Registry fees.

41. The fees for the services of the Registry shall be in the Regulations.

PART VI-PRIORITY OF A SECURITY INTEREST

Competing security interests created by the same borrower.

42. Subject to this part, priority between security interests that were perfected by registration of a notice in the Collateral Registry is determined by the order of registration, without regard to the order of their creation.

43. A security interest in proceeds of collateral that has the same priority over a competing interest in the collateral interests from which the proceeds arose.

Competing security interest in proceeds.

44. (1) Where two or more security interests in the same tangible asset extend to a mass or product and each security interest is perfected, the priority of each security interest in the mass or product is the same as the priority that each security interest in that asset had immediately before it became part of the mass or product.

Competing security interests in tangible asset commingled into mass or transformed into a product.

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

45. (1) Where the collateral is sold, transferred, leased or licensed and the security interest in that asset is perfected, the buyer, transferee, acquires his rights subject to the security lessee or licensee interest.

Security interests competing with rights of buyers, lessees or licensees of the collateral.

(2) A buyer or transferee of the collateral acquires his right free of the security interest, if the lender authorises the sale or transfer of the asset free of the security interest.

(3) The rights of a lessee or licensee of the collateral are not affected by a security interest if the lender authorises the borrower to lease or license the asset unaffected by the security interest.

(4) A buyer of tangible collateral sold in the ordinary course of the seller's business acquires his rights free of the security interest, provided that, at the time of the conclusion of the sale agreement, the buyer does not have knowledge that the sale violates the rights of the lender under the security agreement.

(5) The rights of a lessee of tangible collateral leased in the ordinary course of the lessor's business are not affected by the security interest, provided that, at the time of the conclusion of the lease agreement, the lessee does not have knowledge that the lease violates the rights of the lender under the security agreement.

(6) The rights of a non-exclusive licensee of intangible collateral licensed in the ordinary course of the licensor's business are not affected by the security interest, provided that, at the time of the conclusion of the licence agreement, the licensee does not have knowledge that the licence violates the rights of the lender under the security agreement.

(7) Where a buyer or transferee of tangible collateral acquires his rights free of a security interest, any subsequent buyer or transferee also acquires his rights free of that security interest.

(8) Where the rights of a lessee of a tangible collateral or a licensee of an intangible collateral are not affected by the security interest, the rights of any sub-lessee or sub-licensee are also unaffected by that security interest.

Priority of transferees.

46. (1) A transferee of money shall take the money free from security interest, unless the transferee acts in collusion with a borrower in violation of the rights of a lender.

(2) A transferee of funds through any payments system shall receive the payment free from security interest, unless the transferee acts in collusion with a borrower in violation of the rights of a lender.

(3) A purchaser of a negotiable instrument, negotiable document of title, or security certificate shall have priority over a perfected security interest if the purchaser-

- (a) gave value;
- (b) acquired the negotiable instrument, the negotiable document of title, or the security

certificate without knowledge that the transaction is in breach of a security agreement to which the security interest relates; and

- (c) took possession of the negotiable instrument, the negotiable document of title, or the security certificate.

(4) A purchaser of an intermediated security shall have priority over a perfected security interest if the purchaser satisfied the requirements of paragraphs (a) and (b) of subsection (3) and received credit of the intermediated security to his securities account.

47. A security interest that is perfected under this Act at the time of the commencement of insolvency proceedings in respect of the borrower remains perfected and retains the priority it had before the commencement of the insolvency proceedings, unless another claim has priority pursuant to the applicable insolvency law.

Impact of the borrowers' insolvency on the priority of a security interest.

48. (1) The right of a non-consensual creditor has priority over a security interest if before the security interest is perfected, the non-consensual creditor has registered a notice in the Collateral.

Rights of non-consensual creditor.

(2) Where a security interest is perfected before or at the same time the non-consensual creditor registers a notice, the security interest has priority which is limited to the greater of the credit extended by the lender-

- (a) before he received a notification from the non-consensual creditor that the non-consensual creditor has registered a notice within 30 working days thereafter; or
- (b) pursuant to an irrevocable commitment of the lender to extend credit in a fixed amount, if the commitment was made before the lender

received a notification from the non-consensual creditor that the non-consensual creditor had registered a notice.

(3) A lien given to a person who provided materials or services for movable or immovable property subject to a security interest shall have priority over that security interest if-

- (a) the materials or services relating to the lien were provided in the ordinary course of business;
- (b) the lien has not arisen under an Act that provides that the lien does not have the priority;
- (c) at the time the person provided those materials or services he did not know that a security agreement relating to the collateral contained a provision prohibiting the creation of a lien by the borrower; and
- (d) the person remains in possession of the movable property or has registered a notice in the Collateral Registry within 90 working days after providing the materials or services with respect to immovable property.

Purchase money security interests competing with non-purchase money security interests.

49. (1) A purchase money security interest in equipment, intellectual property or a license therein primarily used or intended to be used by the borrower in the operation of his business, has priority over a competing non-purchase money security interest created by the borrower, provided a notice with respect to the purchase money security interest is registered in the Collateral Registry before the expiry of 10 working days after the borrower obtains possession of the equipment or the agreement for the sale or license of the intellectual property to the borrower has been concluded.

(2) A purchase money security interest in inventory, farm products, intellectual property or intellectual property licence held by the borrower for sale or licence in the ordinary course of the

borrower's business, has priority over a competing non-purchase money security interest created by the borrower, provided that before the borrower obtains possession of the inventory or farm products, or the agreement for the sale or licence of the intellectual property to the borrower has been concluded-

- (a) a notice of the purchase money security interest is registered in the Collateral Registry; and
- (b) a non-purchase money lender that has registered a notice in the Collateral Registry with respect to a non-purchase money security interest created by the borrower in an asset of the same kind receives a notification from the purchase money lender stating that he has or intends to obtain a purchase money security interest in the asset described in the notice and describes the asset to reasonably low its identification.

50. A purchase money security interest that is perfected not later than the expiry of the period specified in subsection (1) of section 49 has priority over the rights of a non-consensual creditor.

Purchase money security interests competing with the rights of non-consensual creditor.

51. (1) Subject to the rights of non-consensual creditors under section 54, the priority of a security interest extends to all secured obligations, including obligations incurred after the security interest was perfected.

Future advances and future collateral.

(2) The priority of a security interest covers all collateral described in a notice registered in the Collateral Registry, whether they are acquired by the borrower or come into existence before or after the time of registration.

52. Knowledge of the existence of a security interest on the part of a lender does not affect the priority of the security interest under this Part.

Irrelevance of knowledge of the existence of a security interest.

PART VII- RIGHTS AND OBLIGATIONS OF THE PARTIES
AND THIRD-PARTY OBLIGORS.

Mutual rights and obligations of the parties.

53. The mutual rights and obligations of the borrower and the lender arising from their agreement are determined by the terms and conditions set out in that agreement, including any rules or general conditions referred to therein.

Obligation of the party in possession to exercise reasonable care.

54. A borrower or lender in possession of collateral shall exercise reasonable care to preserve the collateral.

Obligation of lender to return borrower.

55. Upon extinguishment of a security interest in collateral, a lender in possession of collateral shall return the asset to the borrower or deliver it to the person designated by the collateral.

Right of lender to use and to inspect collateral, and to be reimbursed.

56. (1) A lender in possession of collateral shall-

- (a) be reimbursed for reasonable expenses incurred for the preservation of the collateral; and
- (b) make reasonable use of the asset and apply the revenues he generates to the payment of the secured obligation.

(2) A lender shall have the right to inspect the collateral in possession of the borrower.

Right of the borrower to obtain information.

57. (1) Within 15 working days after receipt of a written request by a borrower, a lender other than a transferee under an outright transfer of a receivable by agreement shall send to the borrower at the address specified in the request-

- (a) a statement of the obligation currently secured; and
- (b) a description of the assets currently encumbered.

(2) A borrower shall be entitled without charge to one response to a request every 6 months.

58. (1) The borrower or the lender or both may give the debtor of the receivable notification of the security interest and the lender shall send payment instruction to the debtor of the receivable.

Right of the borrower or the lender to notify the debtor of the receivable.

(2) Notification of a security interest or of a payment instruction sent in breach of an agreement between the borrower and the lender is not ineffective for the purposes of section 56, and nothing in this section affects any obligation or liability of the party in breach for any damages arising as a result of the breach.

59. (1) Where notification of the security interest under section 58 has or has not been sent-

Right of the lender to payment of receivable.

- (a) if payment of the receivable is made to the lender, he shall retain the proceeds of payment and any tangible asset returned with respect to the receivable;
- (b) if payment with respect to the receivable is made to the borrower, the lender is entitled to payment of the proceeds and to any asset returned to the borrower with respect to the receivable; and
- (c) if payment with respect to the receivable is made to another person over whom the lender has priority, the lender is entitled to payment of the proceeds and to any asset returned to that person with respect to the receivable.

(2) The lender may not retain more than the value of his right in the receivable.

60. (1) Notification of a security interest in a receivable or a payment instruction is effective-

Notification of a security interest in a receivable.

- (a) when received by the debtor of the receivable;
- (b) if it reasonably identifies the encumbered receivable and the lender; and

- (c) if it is in a language that informs the debtor of the content of the receivable.

(2) It is sufficient if a notification of the security interest or a payment instruction is in the language of the contract giving rise to the receivable.

(3) Notification of a security interest in a receivable or a payment instruction may relate to receivables arising after notification.

(4) Notification of a security interest in a receivable created in favour of a lender by the initial or any other lender constitutes notification of all prior security interests in that receivable.

Discharge of the debtor of the receivable by payment.

61. (1) Until the debtor of the receivable receives notification of security interest in a receivable, it is discharged by paying in accordance with the contract giving rise to the receivable.

(2) After the debtor of the receivable receives notification of a security interest in a receivable, it is discharged only by paying the lender or, if otherwise instructed in the notification or subsequently by the lender in writing received by the debtor of the receivable, in accordance with that payment instruction.

(3) Where the debtor of the receivable receives notification of a security interest in the receivable from the lender, the debtor of the receivable is entitled to request the lender to provide within a reasonable period of time adequate proof of its security interest. Unless the lender does so, the debtor of the receivable is discharged by paying in accordance with this section as if it had not received notification of the security interest.

(4) Adequate proof of a security interest referred to in subsection (3) includes any writing emanating from the borrower and indicating that a security interest has been created.

Rights as against the deposit-taking institution and intermediary.

62. (1) The creation of a security interest in a right to payment of funds credited to a bank account maintained with a deposit-taking institution or a security interest in intermediated securities shall not-

- (a) affect the rights and obligations of the deposit-taking institution or the intermediary without his consent; or

- (b) obligate the deposit-taking institution or the intermediary to provide any information about the bank account or the securities account to third parties.

(2) Any rights of set-off that a deposit-taking institution or an intermediary maintaining the deposit account or the securities account may have are not affected by any security interest that the deposit-taking institution or the intermediary may have in a right to payment of funds credited to that bank account or the securities account.

PART VIII-ENFORCEMENT OF A SECURITY AGREEMENT

63. (1) After default, a borrower and a lender are entitled to exercise-

Post default rights.

- (a) any right under the provisions of this part; and
- (b) any other right provided in the security agreement or any other law, except to the extent if it is inconsistent with the provisions of this Act.

(2) A lender may upon default of a borrower-

- (a) appoint a receiver or receiver and manager; or
- (b) apply to the Court for the appointment of a receiver or receiver and manager to-
- (i) take possession of and protect the property;

- (ii) collect the rents and profits derived from the property; and
- (iii) enforce the security interest on behalf of the lender.

(3) A lender who appoints a receiver or receiver and manager under subsection (2) shall submit notice of that appointment to the Registrar within 10 working days of the appointment.

Notification of default.

64. (1) After default, the lender shall give notice of default to the borrower in writing and request the borrower to pay the amount due within 30 working days or the time period indicated in the notice.

(2) Where a borrower fails to pay, make satisfactory arrangements to pay the amount outstanding to the lender or otherwise cure the default within 30 working days or the time period indicated in the notice, the lender may enforce the rights under subsection (2) of section 64.

(3) The lender and an individual borrower whose obligation is secured by immovable property may not agree on a period of less than 30 working days under subsections (1) and (2).

Methods of exercising post default rights.

65. A lender may exercise post default rights by an application to the Court.

Enforcement against Immovable property.

66. Where an obligation is secured by both movable property and immovable property of a borrower, the lender may elect to enforce-

- (a) the security interest in the movable property under the provisions on enforcement of a security interest in movable property; and
- (b) the encumbrance on the immovable property under the law governing enforcement of encumbrances on immovable property; or

- (c) both the security interest in the movable and the encumbrance on the immovable property under the law governing enforcement of encumbrances on immovable property.

67. (1) The borrower, any other person with a right in the collateral or the debtor is entitled to terminate the enforcement process by paying or otherwise performing the secured obligation in full, including the reasonable cost of enforcement.

Right of affected persons to terminate enforcement.

(2) The right of termination may be exercised until -

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

(3) Where the lender has leased or licensed the collateral to a third party, the right of termination may still be exercised subject to the rights of the lessee or licensee.

68. (1) Notwithstanding commencement of enforcement by another creditor, a lender whose security interest has priority over an enforcing creditor may take over enforcement at any time before -

Right of a higher ranking lender to take over enforcement.

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

(2) The right of the higher-ranking lender to take over enforcement includes the right to enforce by any method available to a lender under this Act.

Right of the lender to obtain possession of the collateral.

69. (1) Subject to the rights of a person, including a lessee, licensee, or a superior right to possession, a lender may obtain possession of the collateral after default.

(2) The lender may, without removal, render a collateral unusable and dispose of it on the borrower's premises.

(3) Where a lender is unable to enforce a right of possession in a peaceable manner, the lender may use the services of the police or bailiffs, including evicting the borrower pursuant to an order of a Court.

(4) Where a higher ranking lender is in possession of the collateral, a lower ranking lender is not entitled to obtain possession of the asset.

Right of the lender to dispose of the collateral.

70. (1) After default, a lender may sell, dispose of, lease or license the collateral.

(2) The lender may select the method, manner, time, place and other aspects of the sale or other disposition, lease or license including whether to sell, dispose of, lease or license collateral individually, in groups or altogether.

(3) The lender shall give notice of his intention to-

- (a) the borrower and the debtor;
- (b) any person with a right in the collateral that informs him of that right in writing within 5 working days before the notice is sent to the borrower;
- (c) any other lender that registered a notice of a security interest in the collateral within 5 working days before the notice is sent to the borrower; and
- (d) any other lender that was in possession of the collateral when the enforcing lender took possession.

(4) The notice shall be given within 10 working days before the sale or other disposition, lease or license takes place and must contain-

- (a) a description of the collateral;
- (b) a statement of the amount required at the time the notice is given to satisfy the secured obligation, including interest and the reasonable cost of enforcement;
- (c) a statement that the borrower, any other person with a right in the collateral or the debtor is entitled to terminate the enforcement process; and
- (d) a statement of the date after which the collateral will be sold, otherwise disposed of, leased or licensed, or, in the case of a public disposition, the time, place and manner of the intended disposition.

(5) The notice shall be in a language that is reasonably expected to inform the recipient about its content.

(6) It is sufficient if the notice to the borrower is in the language of the security agreement.

(7) The notice need not be given if the collateral is perishable, may decline in value speedily or is of a kind sold on a recognised market.

71. (1) Where a lender exercises his right without applying to the Court-

- (a) the enforcing lender shall apply the proceeds of his enforcement to the secured obligation after deducting the reasonable cost of enforcement; and

Distribution of the proceeds of a disposition of the collateral and liability for any deficiency.

- (b) the enforcing lender shall pay any surplus remaining to any subordinate competing claimant that, prior to any distribution of the surplus, notified the enforcing lender of his claim, to the extent of the amount of that claim, and remit any balance remaining to the borrower.

(2) Whether or not there is any dispute as to the entitlement or priority of any competing claimant under this Act, the enforcing lender may pay the surplus to the Court for distribution in accordance with the provisions of this Act on priority.

(3) Unless the performance of an obligation is secured by an immovable property of an individual borrower, a debtor remains liable for any amount owing after application of the net proceeds of enforcement to the secured obligation.

Right to propose the acquisition of the collateral by the lender.

72. (1) After default, a lender may propose in writing to acquire the collateral in total or partial satisfaction of the secured obligation.

(2) The lender shall send the proposal to-

- (a) the borrower and the debtor;
- (b) any person with a right in the collateral that notified the lender of that right in writing within 5 working days before the proposal is sent to the borrower;
- (c) any other lender that registered a notice of a security interest in the collateral at least 5 working days before the proposal is sent to the borrower; and
- (d) any other lender that was in possession of the collateral when the lender took possession.

(3) The proposal shall include-

- (a) a statement of the amount required at the time the proposal is given to satisfy the secured obligation, including interest and the reasonable cost of enforcement, and the amount of the secured obligation that is proposed to be satisfied;
- (b) a statement that the lender proposes to acquire the collateral described in the proposal in total or partial satisfaction of the secured obligation;
- (c) a statement that the borrower, any other person with a right in the collateral or the debtor is entitled to terminate the enforcement; and
- (d) a statement of the date after which the collateral will be acquired by the lender.

(4) A lender that has made a proposal for the acquisition of the collateral in full satisfaction of the secured obligation acquires the collateral, unless he receives an objection in writing from any person entitled to receive the proposal under subsection (2) within 10 working days after the proposal is received by that person.

(5) A lender that has made a proposal for the acquisition of the collateral in partial satisfaction of the secured obligation acquires the collateral, only if he receives the consent in writing of all persons entitled to receive the proposal under subsection (2).

73. (1) Where a lender sells or otherwise disposes of the collateral, the buyer or other transferee acquires the borrower's right in the asset free of the rights of the enforcing lender and any competing claimant, except rights that have priority over the right of the enforcing lender. Rights acquired in the collateral.

(2) Where a lender leases or licenses the collateral, the lessee or licensee shall benefit from the lease or license during its term, except as against creditors with rights that have priority over the right of the enforcing lender.

(3) Where a lender sells or otherwise disposes of, leases or licenses the collateral not in compliance with this Part, the buyer or other transferee, lessee or licensee of the collateral acquires the rights or benefits, provided that it had no knowledge of a violation of the provisions of this Part that materially prejudiced the rights of the borrower or another person.

Collection of payment. 74. (1) After default, a lender with a security interest in a receivable, negotiable instrument, right to payment of funds credited to a bank account or securities is entitled to collect payment from the debtor of the receivable, obligor under the negotiable instrument, deposit taking institution, issuer of the security or the intermediary holding the securities account.

(2) A lender may exercise the right to collect under subsection (1) before default provided that the borrower consents.

(3) A lender exercising the right to collect under subsection (1) or (2) is also entitled to enforce any personal or property right that secures or supports payment of the collateral.

Collection of payment by an outright transferee of a receivable. 75. (1) In the case of an outright transfer of a receivable by agreement, the transferee is entitled to collect the receivable at any time after payment becomes due.

(2) A transferee exercising the right to collect under subsection (1) is also entitled to enforce any personal or property right that secures or supports payment of the receivable.

Regulations. 76. The Minister may, by statutory instrument, make regulations as he considers necessary or expedient for giving effect to the provisions of this Act.

PART IX - MISCELLANEOUS

Repeal. 77. (1) The following enactments are hereby repealed-

(a) The Borrowers and Lenders Act, 2014 (Act No. 13) of 2014;

(b) Sections 150-151, 175 and 180-181 of the Companies Act, 2009 (Act No. 5) of 2009.

(2) Any law governing the registration of conveyances, deeds and other instruments in the Office of the Administrator and Registrar-General creating security interest are superseded by this Act.

78. (1) Any rules, regulations, orders, notices, prescription and other instruments or directives issued under the repealed Acts and in existence immediately before the commencement of this Act, shall continue in operation until their expiration or until their express repeal or revocation or cancellation. Transitional provisions.

(2) All investigations, prosecutions and other legal proceedings instituted or commenced under any of the repealed Acts and which have not been concluded before the commencement of this Act, shall be continued and concluded in all respects as if that Act had not been repealed.

(3) Any security interest registered under the Registration of Instruments Act (Cap 256) shall be deemed to have been registered under this Act.