MOVABLE PROPERTY SECURITY INTEREST BILL, 2015

MEMORANDUM

The objects of this Bill are to provide for the:

(a) Legal framework relating to security interests in movable property;
(b) Creation of security interests in movable property;
(c) Perfection of security interests;
(d) Determination of priority of security interests;
(e) Enforcement of security interests;
(f) Establishment of the Collateral Registry Office for security interests in movable property;
(g) Matters connected with, or incidental to, the foregoing.

Musa Mwenye

ATTORNEY - GENERAL
ARRANGEMENT OF SECTIONS

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A BILL
ENTITLED

The objects of this Bill are to facilitate the use of movable property as collateral, provide the legal framework relating to security interests in movable property and in particular to provide for the creation of security interests; perfection of security interests; the determination of priority of security interests; enforcement of security interests; establishment of the Collateral Registry Office; and for matters connected with, or incidental to the foregoing.

Enactment ENACTED by the Parliament of Zambia

PART I
PRELIMINARY

1. Short title and commencement
(1) This Act may be cited as the Movable Property Security Interests Act, 2015.

(2) This Act shall come into operation on such date as the Minister may by Statutory Instrument prescribe.

2. Application of the Act
(1) This Act shall apply to all security interests in movable property as defined in Section 3; including a lien, charge, or other interest in movable property created by companies incorporated under the Companies Act.

(2) The provisions of this Act on perfection, registration and
priority shall also apply to liens created by judgments or operation of any laws of Zambia.

(3) This Act shall not apply to
an interest created or provided for by any of the following transactions—

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

(b) transfer of a right to payment that arises in connection with an interest in land, including a lease and rents;

(c) a mortgage of a ship under the Merchant Shipping Act, Cap 468, and an interest in aircraft and aircraft engines under the Civil Aviation Authority Act, No. 7 of 2012; and

(d) pledges of securities held in the Central Securities Depository System governed by the Rules issued by the Bank of Zambia.

(4) The provisions of this Act on perfection, registration, priority and enforcement shall supersede laws applicable to interests created by conditional sale agreements (including agreements to sell subject to retention of title), hire purchase agreements, and financial leases, outright transfers of accounts receivable, and any other interests that secure an obligation.

(5) The provisions of this Act on perfection, registration and priority shall supersede laws applicable to interests created by operating leases with the duration that exceeds 1 year, outright transfers of accounts receivable, and consignments that do not secure an obligation.
3. (1) In this Act, unless the context otherwise requires—

“accession” means goods that are physically attached to other goods without losing their separate identity;

“account receivable” means a right to payment of money, including book debts not in the form of a negotiable instrument or a deposit account;

“after-acquired property” means movable property that the debtor acquires after the conclusion of the security agreement;

“Agency” means the Patents and Companies Registration Agency established under the Patents and Companies Registration Act, Act No. 15 of 2010;

“bank” means a company authorized under the Banking and Financial Services Act to conduct banking business;

“collateral” means movable property, whether tangible or intangible, that is subject to a security interest;

“Collateral Registry Office” means the office at the Agency responsible for the operation of the register of security interests;

“company” has the meaning assigned in Section 2 of the Companies Act, Cap 388;

“consumer goods” means goods that the debtor uses or intends to use for personal, family or household purpose;

“control agreement” means an agreement between a bank or financial institution, a debtor that is the customer of the bank or financial institution
and a secured creditor, according to which the bank or financial institution has agreed to follow instructions from the secured creditor without further consent of the debtor;

“court” means the High Court or any other courts of competent jurisdiction within Zambia;

“debtor” means a person that creates a security interest to secure either its own obligation or that of another person, and includes—

(i) a financial lessee;

(ii) a buyer that acquires goods subject to a retention of title of the seller;

(iii) a grantor of any type of charge, chattel mortgage, pledge or lien in movable property;

(iv) a consignee who receives goods from another person under a commercial consignment for the purposes of resale; and

(v) a seller of accounts receivable and a lessee under an operating lease with the term that exceeds 1 year even if the receivables or the leased object do 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;

“deposit account” means an account maintained by a bank or financial institution in which it holds funds for the customer;

“document of title” means a document, including a warehouse receipt and a bill of lading that embodies a right to delivery of goods and may be transferred by negotiation;
“farm products” include

(i) crops grown, growing, or to be grown;

(ii) fish stocks;

(iii) livestock, poultry, bees and their unborn offspring;

(iv) seeds, fertilisers, manure and supplies used or produced in a farming operation; and

(v) products of crops and livestock in their raw states;

“financial institution” means financial institution as defined in the Banking and Financial Services Act, Cap 387;

“financial lease” means a lease, including a hire-purchase agreement, at the end of which

(i) the lessee automatically becomes the owner of the property that is the object of the lease;

(ii) the lessee may acquire ownership of the property by paying no more than a nominal price; or

(iii) the property has no more than a nominal residual value;

“financing statement” means forms in writing or their electronic equivalent on which information is provided in order to effect, amend, terminate or continue a registration;

“fixtures” means movable property that is to be physically attached to immovable property without losing their separate identity, but does not include improvements as defined in Section 3 of the Housing (Statutory and Improvement Areas) Act, Cap 194;
“goods” means tangible movable property and include farm products, fixtures, inventory, equipment, consumer goods, trees that have been or are to be severed under a contract for sale, and oil, gas or minerals that have been extracted;

“intangible” includes movable property other than goods, documents of title, securities, money and negotiable instruments;

“inventory” means goods that are—

(i) held for sale or lease in the ordinary course of business; and

(ii) raw materials or work in progress;

“movable property” means any form of property other than land and includes goods, intangibles, securities, money, negotiable instruments and documents of title;

“perfection” means security interest becoming binding on third parties;

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

“purchase money security interest” means—

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

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

(iii) an interest of the lessor under an operating lease with the term that exceeds 1 year; and

(iv) The interest of the consignor who delivers goods to a consignee under a commercial consignment, but does not include a transaction of sale and lease it back to the seller;

“Register” means a database of information relating to security interests kept at the Collateral Registry Office;

“Registrar” means a person appointed as Registrar under the Patents and Companies Registration Agency Act, Act No.16 of 2011;

“secured creditor” means a person in whose favour a security interest is created and includes—

(i) a financial lessor;

(ii) a seller who reserved title to the sold goods;

(iii) a chargee, under any type of charge, chattel mortgagee or holder of any type of consensual lien; and

(iv) a buyer of accounts receivable, commercial consignor and an operating lessor under a lease the term of which exceeds 1 year even if the receivables, goods provided under the commercial consignment or the leased object do not secure an obligation;

“security agreement” means an agreement between the debtor and secured creditor that creates or provides for a security interest;

“securities” have the same meaning as in Section 2 of the Securities Act, Cap 354;
“security interest” means a property right or interest in movable property that is created by agreement or transaction that secures payment or other performance of an obligation, including any type of charge over company property, chattel mortgage and consensual lien. It includes a retention of title right, financial lease right, the right of a transferee of accounts receivable and the right of the commercial consignor even if it does not secure payment or other performance of an obligation.

“value” means consideration that is sufficient to support a simple contract and includes an antecedent debt or liability and a binding commitment to extend credit;

“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 consumer goods, equipment, farm products or 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.

PART II

CREATION OF SECURITY INTERESTS

Creation of a security interest 4. (1) Any person, whether an individual or entity may create a security interest and may be a debtor and/or secured creditor under this Act.

(2) A security agreement shall be effective and create a security interest as between the parties according to its terms.

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

(4) In respect of movable property to which the debtor has rights or the power to create a security interest at the time of the conclusion of the security agreement, the security interest is created at that time.

(5) Where debtor acquires rights or the power to create a security interest subsequently to the conclusion of the security agreement, the security interest in that movable property is created when the debtor acquires such rights or powers.

(6) A security interest in after-acquired or future property shall be created without written consent or any further act of the debtor. With respect to after-acquired or future property that is a consumer good, the debtor must provide written consent.

Debtor’s rights in the collateral 5.

(1) For purposes of this Act, while a transferee’s interest in accounts receivable remains unperfected, the debtor is deemed to have rights and title to the accounts receivable.

(2) For purposes of this Act, the debtor is deemed to have sufficient rights to create a security interest in the collateral even though the seller, financial lessor, operating lessor under a lease the term of which exceeds 1 year and other creditor claims ownership to the collateral.

(3) The security interest shall be created in the rights that the debtor may have to the collateral.
Debtor may transfer collateral

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

(2) A transfer by the debtor shall not prejudice the rights of the 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.

Content of a security agreement

7.       The security agreement shall—

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

(2) identify the secured creditor and the debtor;

(3) describe the secured obligation, including the maximum amount for which the security interest is enforceable; and

(4) describe the collateral in a manner that reasonably allows its identification pursuant to Section 8 of this Act.

Description of collateral in security agreement

8.       (1) A security agreement shall be enforceable and a security interest created in respect of collateral only if a security agreement contains an adequate description of the collateral as specified under subsection (2).

(2) For the purposes of a security agreement, a description of collateral shall be adequate if the collateral is described by:
<table>
<thead>
<tr>
<th>Description of collateral as consumer goods inadequate</th>
<th>A description is inadequate for the purposes of Section 7 if it describes the collateral as consumer goods without specific reference to the item or kind of collateral.</th>
</tr>
</thead>
</table>
| Continuation of security interest to proceeds, products and masses | (1) A security interest shall automatically continue 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 they were commingled in a mass or product continues in the mass or product. Such security interest is limited to the value of the collateral immediately before it became part of the mass or product. |
| Anti-assignment clauses are ineffective | (1) A transfer of and a security interest in an account receivable is effective as between the debtor and the secured creditor and as against the person liable for payment of the receivable notwithstanding any agreement limiting in any way the debtor’s right to transfer the |
receivables, including to create a security interest.

(2) Nothing in this Section affects any obligation or liability of the debtor for breach of the agreement referred to in subsection (1), but the other party to the agreement may not avoid the original contract or the security agreement on the sole ground of the breach of that agreement.

(3) A security interest in a deposit account shall be created and effective notwithstanding any agreement between the debtor and the bank or financial institution. However, the bank or financial institution owes no duty to the secured creditor without its consent.

Extension of a 12. A security interest created in a document of title extends to the goods security interest covered by the document.
to goods
covered by a
document of
title

PART III

PERFECTION OF SECURITY INTERESTS

Perfection 13. (1) A security interest is perfected when—

(a) the security interest has been created; and
(b) either—

(i) a financing statement has been registered in respect of the security interest; or
(ii) the secured creditor, or another person on the secured creditor’s behalf, has possession of the collateral; or

(iii) the secured creditor, or another person on the secured creditor’s behalf has control of the collateral that is a deposit account.

(2) “control” with respect to a deposit account exists—

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

b) upon conclusion of a control agreement with the debtor and the secured creditor.

(3) Subsection (1) shall apply regardless of the order in which creation and either of the steps referred to in paragraph (b) of that subsection occur.

(4) For the purposes of this Section, the secured creditor shall not be in possession of collateral that is in the actual or apparent possession or control of the debtor or the debtor’s agent.

Continuity of perfection

A security interest shall be continuously perfected if—

(a) the security interest is perfected under this Act;

(b) the security interest is subsequently perfected in another way under subsection 13(1)(b); and

(c) there is no intervening period during which the security
Continuation of perfection of security interest in proceeds 15. A security interest shall remain continuously perfected in proceeds if—

(a) the security interest in the original collateral is perfected by registration of a financing statement that contains a description of the property that is proceeds;
or

(b) the proceeds are cash proceeds that consist of money, accounts receivable, negotiable instruments, securities or funds credited to a deposit account.

Temporary perfection of security interests in proceeds in other cases 16. If the proceeds are not cash proceeds and not within description of the collateral in the financing statement as referred to in Section 15, a security interest in proceeds shall be temporarily perfected until the expiration of 21 days after the proceeds arose. If the secured creditor does not perfect within 21 days its security interest in the proceeds will become unperfected.

Security interest continues in transferred collateral 17. A security interest does not become unperfected solely because the collateral is sold or otherwise transferred, leased or licensed unless the secured creditor authorised such transfer.
Perfection with respect to a document of title, negotiable instrument and security certificate may be perfected by the registration of a financing statement or by the secured creditor’s possession.

(2) A perfected security interest in a document of title also extends to the goods covered by the document of title.

PART IV

COLLATERAL REGISTRY OFFICE

Collateral Registry Office and Registration

19. There shall be established under the Agency the Collateral Registry Office in which financing statements relating to security interests in movable property collateral shall be registered.

20. (1) The Collateral Registry Office shall store information provided in financing statements pursuant to Section 23 in the Register.

(2) Secured creditors and searchers shall have immediate access to the Register by electronic means as prescribed in the Regulations.

21. (1) A financing statement may be registered before or after a security agreement is concluded.
(2) By entering into a security agreement, the debtor authorises the registration of a financing statement and amendments thereto other than those specified in subsection 32(2).

(3) The debtor may also authorise registration of a financing statement prior to the conclusion of a security agreement in a signed writing.

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

**Administrative role of the Collateral Registry Office**

22. The Collateral Registry Office shall not verify whether authorisation for registration has been properly granted pursuant to this Act or conduct any scrutiny of the information provided in the financing statement.

**Data required to register financing statement**

23. (1) The secured creditor who lodges a financing statement with the Collateral Registry Office shall indicate the following information:

   (a) the identifier of the debtor;

   (b) the identifier of the secured creditor or a representative of the secured creditor;

   (c) a description of the collateral;

   (d) the date of effectiveness, perfection or registration under prior law pursuant to Part VIII of this Act;
(e) the maximum amount for which the secured obligation may be enforced;

(f) the term of effectiveness of the registration which shall not exceed 5 years; and

(g) any other data as may be prescribed by or required by Regulations.

(2) The collateral, other than that which must be described by a serial number as provided in the Regulations must be described according to Sections 8 and 9 of this Act.

Rejection of a financing statement

Registration of a financing statement shall be rejected only if—

(a) it is not lodged electronically in the prescribed manner or in a form that enables the information to be entered into the Register; or

(b) it does not contain the information required by Section 23; or

(c) the prescribed fee has not been paid.

When financing statement is deemed to be perfected by registration

The registration of a financing statement is effective from the date and time when the information in the financing statement is entered into the Register so as to be accessible to searchers.

Verification

The Collateral Registry Office shall provide a verification statement
statement to be forwarded to the filer

Debtor entitled to a verification statement 27. A secured creditor shall, no later than 14 working days after the day on which it received the verification statement, provide to the debtor a copy of the verification statement.

Effectiveness of Registrations

Error in the registration 28. (1) Subject to subsection (2), a registration shall be ineffective if it contains an error in—

(a) the identifier of a debtor; or

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

(2) An error in the serial number of the collateral may render the registration ineffective only with respect to the collateral identified by such serial number and an error in the identifier of a debtor may render the registration ineffective only with respect to that debtor.

(3) A registration that contains an error in the identifier of the debtor but correctly indicates the serial number of the collateral remains effective only with respect to that collateral.

Consequences of other errors 29. (1) An error in the collateral description other than in the serial number may render the registration ineffective with respect to that
collateral if the error would seriously mislead a searcher.

(2) An incorrect description of some collateral shall not render the registration ineffective with respect to other collateral adequately described. (3) An error in the identifier or address of the secured creditor, address of the debtor, or any in other information required by the Regulations or voluntarily entered by the secured creditor does not render the registration ineffective.

**Duration of and Amendments to Registrations**

**Duration of registration**

30. (1) The registration shall be effective until the earlier of—

(a) the expiration of the term specified in the registration that shall not exceed 5 years; or

(b) the discharge of the registration.

(2) The term of a registration may be extended at any time before its expiry by the registration of an amendment financing statement that indicates in the designated field a new term of effectiveness, not exceeding 5 years.

**Transfer of secured obligation and collateral**

31. (1) If the secured creditor transfers the secured obligation relating to a security interest perfected by registration, the security interest will remain effective without registration of an amendment financing statement that reflects the transfer.

(2) The registration shall remain effective with respect to the collateral that was disposed of by the debtor unless the secured
creditor authorised the disposal free of its security interest.

(3) For the registration to remain effective against the transferee, the secured creditor must register with the Collateral Registry Office an amendment financing statement adding the transferee as the debtor within 14 after it learns of the transfer.

Voluntary amendment to, or discharges of, registrations of financing statement

(1) The registration may be amended or discharged by the secured creditor by registering with the Collateral Registry Office an amendment financing statement at any time before expiration of its effectiveness.

(2) An amendment to a registration that adds collateral, that adds a new debtor or that increases the maximum amount of the secured obligation is effective as to the added collateral, the added debtor and the new maximum amount only from the date when the amendment financing statement is registered.

(3) If the debtor changes its identifier such that the registration is no longer retrievable in a search against the debtor’s current identifier, the security interest shall not be perfected with respect to the collateral that the debtor acquires 30 days after the change.

Discharge of registration relating only to consumer goods

(1) If the registration covers consumer goods only, the secured creditor shall discharge the registration within 14 days after all obligations under the security agreement have been performed, unless the registration expires earlier.

(2) The amendment financing statement to discharge a registration
under subsection (1) shall be lodged in a prescribed manner and form upon payment of a prescribed fee.

Demand to amend or discharge a registration

34. In cases not governed by Section 33, the debtor may give a written demand to the secured creditor to amend or discharge the registration if—

(a) all of the obligations under the security agreement to which the registration relates have been performed and there is no commitment to make future advances;

(b) the secured creditor has agreed to release part of the collateral described in the registration;

(c) the collateral described in the registration includes an item or kind of movable property that is not collateral under a security agreement between the secured creditor and the debtor;

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

(e) the security interest is extinguished.

Compulsory amendment or discharge by court order

35. (1) Upon receipt of the demand submitted under Section 34, the secured creditor must register, within 14 days, an amendment financing statement discharging or amending the registration, as appropriate, with the Collateral Registry Office.

(2) If the secured creditor fails to comply, the person giving the demand may apply to the court to issue an order amending or discharging the registration, as appropriate.
| Entitlement to search | 36. | (1) A person may search the Register and obtain a printed search result in accordance with this Act and the Regulations.  
(2) The Minister may by Regulations prescribe any such information which shall not be made public. |
| Certificate of status of receivable as evidence | 37. | The Registrar may, upon request and payment of a prescribed fee, issue a certificate of status which shall be conclusive evidence of the existence of information in the Register as of the date and time of its issuance. |
| Submitting financing statement with frivolous, malicious or criminal intent | 38. | A person who lodges a financing statement for registration with a frivolous, malicious or criminal purpose or intent commits an offence. |
| Indexing of information | 39. | The Register shall index information provided in financing statements so that it can be retrieved by a search according to the identifier of the debtor or the serial number of the collateral as defined in the Regulations. |
PART V

PRIORITY BETWEEN SECURITY INTERESTS

General Priority Rules

Priority of security interests in same collateral

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

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

(b) priority between perfected security interests shall be determined by the order of whichever of the following actions first occurs—

(i) the registration of a financing statement;

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

(iii) the secured creditor, or another person on the secured creditor’s behalf acquiring control of the collateral; and

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

Same priority for original collateral and proceeds

41. The priority of a security interest in original collateral shall also be the priority with respect to its proceeds.
Transfer of security interest does not affect priority  

42. A security interest that is transferred shall have the same priority as it had at the time of the transfer.

Voluntary subordination of security interest priority  

43. (1) The secured creditor may agree to subordinate its priority in favour of any other claimant.

(2) Subordination is effective without registration in the Collateral Registry Office.

(3) An agreement to subordinate shall not adversely affect rights of a person that is not a party to this agreement.

Priority applies to all secured obligations and advances  

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

Special Priority Rules for Security Interests

Priority of purchase money security interest in collateral or its proceeds  

45. A purchase money security interest in collateral and its proceeds shall 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.

Priority between purchase money  

46. (1) A purchase money security interest in goods or their proceeds other than inventory taken by a seller, lessor or consignor of the collateral, shall have priority over any other purchase money security
security
interests

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.

(2) A purchase money security interest in inventory and their proceeds shall have 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 purchase money 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 of purchase money security interest in fixtures

Cap 194

Cap 185

Priority of security interest in goods before they become accessions

Priority of security interests in processed or

47. A purchase money security interest in fixtures has priority as against third parties with existing rights in the immovable property provided that the financing statement is registered in the Collateral Registry Office before the third party acquires rights in the immovable property.

48. A security interest in goods that is created and perfected before the time when the goods become an accession shall have priority over a claim to the goods as an accession made by a person with an interest in the whole.

49. (1) A perfected security interest in goods that subsequently become part of a product or mass shall continue 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
commingled goods mass.

(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.

(3) For purposes of this Section, commingled properties are 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.

Priority of security interests in a deposit account

50. (1) A security interest in a deposit account perfected by control has priority as against a competing security interest perfected by registration, irrespective of the time when control was acquired and the competing security interest perfected by registration.

(2) If the 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 deposit account.

Priority of security interest in transferred collateral over those granted by transferee

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

Priority of creditor who

52. A recipient of money or funds from a deposit account receives such money or funds free of a security interest unless the recipient acts in
A purchaser of a negotiable instrument, security certificate or document of title shall have priority over a perfected security interest in the negotiable instrument, security certificate or the document of title if the purchaser—

(a) gives value;

(b) acquires the negotiable instrument, security certificate or the document of title 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, security certificate or the document of title.

(1) The rights of an assignee of an account receivable shall be 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) shall not apply if the account debtor has made an
enforceable agreement not to assert defences to claims arising out of the contract.

(3) In this Section—

(a) “account debtor” means a person who is obligated under an account receivable; and

(b) “assignee” includes a transferee or other secured creditor.

Rights of the buyer or lessee of goods

(1) A buyer or lessee who acquires goods for value and receives their possession shall take 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 shall take 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 the security agreement under which the security interest was created.

Priority of Liens

Lien has priority over security interest relating to same goods

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 in the same goods shall have priority over that security interest but only up to the reasonable value of the services rendered.
Judgment creditor and lien holder has priority over unperfected security interest

(1) The interest of a judgment creditor, including a creditor whose lien arises by operation of law such as for owed taxes and other charges in any collateral shall have priority over any security interest in the same collateral if the security interest is not perfected 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, the time of seizure;

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

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

(3) The priority of an interest identified in subsection (1) as against perfected security interests is determined according to Section 40, and the time of execution shall be deemed to be the time of perfection.

(4) The priority of the security interest extends to credit disbursed by the secured creditor:

(a) before the expiry of 30 days after 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); 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

APPLICATION OF THIS PART

1. This Part shall apply to all security interests created under this Act 
with the exception of those that are created or provided for by an 
outright transfer of an account receivable and an operating the term of 
which exceeds 1 year.

2. After default, a secured creditor has the rights provided in this Part 
and those provided in the security agreement with the debtor. A 
secured creditor may also resort to any available judicial procedure.

3. In addition to the remedies available under this Act, the security 
agreement and those that may be granted by courts, a secured creditor 
may seek appointment of a receiver or receiver and manager under 
Division 5.3 of the Companies Act.

SECURED CREDITOR’S RIGHT TO TAKE POSSESSION OF AND APPLY THE COLLATERAL 

AFTER DEFAULT

1. After default, a secured creditor may:

(a) take possession of the collateral;

(b) sell or dispose of the collateral; or
(c) without removal, render the collateral unusable.

(2) A secured creditor may proceed under this Section:

(a) pursuant to judicial process; or

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

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

(4) Commencement of enforcement requires registration of the enforcement form. The enforcement form shall identify the debtor, the secured creditor and the collateral against which enforcement is sought.

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

Secured creditor may render collateral unusable

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

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

Secured creditor 61.

(1) A secured creditor may collect and apply accounts receivables,
may apply certain collateral in satisfaction of secured obligation

money or a negotiable instrument taken as collateral to the satisfaction of the obligation secured by the security interest if the debtor is in default.

(2) Unless otherwise agreed, the secured creditor may notify the account debtor and collect payment even prior to default.

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

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

Disposal of Collateral on Default

Secured creditor 62. A secured creditor may dispose of the collateral by sale, lease, license or other form of disposal in its present condition or following any commercially reasonable preparation or processing.

Duty of secured creditor selling collateral 63. A secured creditor shall owe a duty to obtain a reasonable price obtainable at the time of sale or other disposal.

Power of sale applies to document of title and related 64. If the collateral is a document of title, the power of disposal provided by Section 62 shall apply to the document of title and to the goods to which it relates.
Methods of sale of collateral

A secured creditor may sell the collateral by auction, public tender or any other method provided for in the security agreement, including lease and license.

Notice of sale of collateral

(1) A secured creditor shall, not less than 14 days before selling the collateral, give notice to the following persons in a prescribed form—

(a) the debtor; and

(b) any person who has registered a financing statement in respect of the collateral that became effective before the secured creditor repossessed the collateral.

(2) Subsection (1) shall not apply if—

(a) the collateral may perish within 14 days of the repossession;

(b) the secured creditor believes on reasonable grounds that the collateral will decline substantially in value if it is not disposed of immediately;

(c) the cost of care and storage of the collateral is disproportionately large in relation to its value; or

(d) the collateral consists of inventory or farm products.

(3) If a security interest relates to some collateral listed in subsection (2), the secured creditor may sell the collateral listed in subsection (2) but must comply with subsection (1) with respect to the other collateral.
Extinguishment of subordinate security interests on sale 67. If collateral has been sold under this Part, all security interests in the collateral and its proceeds as well as other rights in the collateral that are subordinate to the security interest of the secured creditor who sold the collateral shall be extinguished on the sale of the collateral.

Secured creditor to give statement of account to debtor 68. The secured creditor shall, within 21 days after the sale of the collateral, provide to the persons listed in subsection 66(1) a statement of account in writing, indicating—

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

(b) the amount of the costs and expenses of the 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 69. (1) A secured creditor who has sold collateral shall apply the net proceeds of the sale towards the satisfaction of the debt or other obligation secured by its security interest.

(2) In subsection (1), “net proceeds” means net proceeds of the sale after deducting the reasonable costs and expenses of the secured creditor incidental to taking possession, holding, storing, repairing, maintaining, valuing, and preparing the sale of, and selling the collateral.

(3) If a secured creditor has retained collateral in satisfaction of the
debtor or sold 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 claim holders subject to this Act who have a subordinate perfected security interest or claim in the order of their priority as provided under this Act; and

(b) the debtor.

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

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

(6) The debtor remains liable for any deficiency.

**Retention of Collateral by Secured Creditor**

(1) After default, a secured creditor may propose to retain the collateral other than consumer goods in full satisfaction of the obligation secured by it.

(2) The secured creditor shall give notice of the proposal to the persons entitled to receive a notice of sale of the collateral under subsection 66(1).

(3) If a person, entitled to a notice and whose interest in the collateral would be adversely affected by the secured creditor’s retention of the
collateral, delivers to the secured creditor a written notice of objection within 14 days after the notification was sent, the secured creditor must dispose of the collateral by sale or otherwise.

(4) If no notice of objection is received, the secured creditor shall, at the expiration of the 14-day period be deemed to have elected to take the collateral in full satisfaction of the obligation secured by it.

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

Right to Redeem Collateral and Reinstatement Security Agreement

Entitled persons may redeem collateral

(1) At any time before the secured creditor sells the collateral or takes the collateral in satisfaction of the secured obligation, the debtor, the person that owes payment or other secured creditor may redeem the collateral by—

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

(b) paying any other reasonable expenses incurred by the secured creditor.

(2) The debtor’s right to redeem the collateral shall have priority over any other person’s right to redeem the collateral.

Debtor may reinstate security

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

(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.

PART VII
MISCELLANEOUS PROVISIONS

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

73. 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 commercially reasonable standards.

Entitlement to damages for breach of obligation

74. (1) If a person fails to discharge any duty or obligation imposed by this Act or a security agreement, the person to whom the duty or obligation is owed shall have a right to recover damages for any loss or damage.

(2) Nothing in subsection (1) shall limit or affect any liability that a person may incur under any law other than this Act.

Secured creditor

75. (1) A debtor may request the secured creditor to send or make
to provide information to debtor available to any specified person, at an address specified by the debtor, any of the following—

(a) a summary of a security agreement that creates or provides for a security interest;

(b) a statement in writing of the amount of the current indebtedness and of the terms of payment of the indebtedness;

(c) an itemised list of 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 the secured creditor no longer has an interest in the collateral covered by the registration, the secured creditor shall disclose to the debtor the name and address of the immediate successor in interest or transferee and the latest successor in interest or transferee, if known.

(3) A secured creditor shall comply with the request within 14 days of its receipt.

(4) A secured creditor 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 3 months.

Electronic transactions and service of 76. (1) Any financing statement under this Act may be lodged to the Collateral Registry Office by means of a device or facility that records or stores information electronically as authorised by the Agency.
documents (2) Any document or certificate required to be signed, issued or kept by the Registrar, may be signed, issued or kept in electronic form.

(3) A document or notice submitted under this Act shall be served by:

   (a) personal service on an individual or on a Director or Secretary of the company; or

   (b) leaving the notice or document at the registered office of the company.

(4) Where service in accordance with subsection (3) is not possible or if the parties have agreed otherwise, a document or notice may be served via registered mail or to electronic mail of the company.

(5) Nothing in this Section shall affect any provisions in this Act relating to the service of any document, or detract from the power of any court to direct how the service of any document relating to legal proceedings before the court shall be completed.

PART VIII

ADMINISTRATION OF THE ACT

Administration of Act 77. (1) This Act shall be administered by the Agency.

(2) Under this Part, officer means an employee or agent of the Agency.

Establishment of Collateral Office 78. There shall be established under the Agency an office to be called the Collateral Registry Office.
<table>
<thead>
<tr>
<th>Section</th>
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<tr>
<td>79.</td>
<td>The Registrar shall exercise the powers and perform the functions assigned to him by this Act and the Patents and Companies Registration Agency Act, provided that any power conferred or duty imposed on the Registrar by this Act may be exercised or performed by the Registrar personally or by an officer acting under a delegation from or under the control or direction of the Registrar.</td>
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<tr>
<td>80.</td>
<td>The Agency may appoint, on such terms and conditions as it may determine such officers as it considers necessary for the carrying out of its functions under this Act.</td>
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<tr>
<td>81.</td>
<td>The seal of the Agency kept in terms of the Patents and Companies Registration Act, 2010, shall be used for the purposes of this Act and the impression thereof, made for such purposes shall be judiciary noticed.</td>
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</table>
| 82.     | (1) The Collateral Registry Office shall maintain the Register required under this Act.  
(2) Where a financing statement is lodged under this Act, the Register shall register the financing statement.  
(3) The Register shall be kept in electronic format. |
| 83.     | Subject to the provisions of this Act, the Collateral Registry Office shall, upon request of any person and on payment of the prescribed |
information from register on request

Immunity of Officers as regards official acts 84. Neither the Registrar nor any officer in the Collateral Registry Office shall incur any liability for any act or omission or otherwise by reason of or in connection with any action or investigation, or any report or other proceedings consequent on any such action or investigation.

Registration of financing statements 85. (1) Where this Act provides for any financing statement to be lodged with the Collateral Registry Office, the Registrar shall register them in the form and manner prescribed.

(2) For the purposes of this Act, a financing statement shall be deemed not to have been lodged with the Collateral Registry Office until any fee prescribed under this Act has been paid.

Financing statements to be in approved language 86. Information in the financing statement shall be in English.

Evidentiary provisions 87. (1) A copy of a registration certified by the Registrar to be a true copy shall be admitted in any proceedings as conclusive evidence of the information stated therein.

(2) A copy of a registration certified by the Registrar shall be admitted in evidence without further proof and without production of the
original financing statement.

(3) In any proceedings, a court shall take judicial notice of the office of the Registrar.

Appeal against decision of the Registrar 88. A person aggrieved by a decision of the Registrar may within 30 days after the date on which he is notified of the decision, appeal to the court against the decision, and the court may confirm, reverse or vary the decision or make such order or give such directions in the matter as it thinks fit.

Oaths and affirmations 89. Any person who takes any oath or swears to the truth of any affidavit may, in lieu thereof, make an affirmation or declaration in accordance with the law relating to affirmations or declarations in Zambia.

Registrar to appear in legal proceedings 90. (1) In any legal proceeding in which the relief sought includes modification of some information in the Register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the court.

(2) Unless otherwise directed by the court, the Registrar, in lieu of appearing and being heard, may submit to the court a statement in writing signed by the Registrar, giving particulars of the proceedings before the Registrar in relation to the matter in issue or of the grounds of any decision given by the Registrar affecting it or of the practice of the Collateral Registry Office in like cases or of such other matters relevant to the issues, and within his knowledge as Registrar, as the
Registrar thinks fit, and the statement shall be deemed to form part of the evidence in the proceeding.

Regulations and fees

91. (1) The Minister may, by statutory instrument, make Regulations for or with respect to any matter under this Act that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), such Regulations may be made on the following matters;

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

(b) the format of financing statements to be registered at the Register for the purposes of this Act;

(c) the payment of fees and charges in respect of any matter or anything done or provided for under this Act;

(d) the procedure to be followed in connection with any application or request to the Registrar or any proceeding before him;

(e) the provision of copies of any documents under this Act, and the certification of such copies;

(f) the making of searches under this Act, including the times when and the manner in which they may be made;

(g) the service of notices and other documents under this Act; or

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(i) any matter necessary or convenient to be provided for in relation to the transition to this Act.

PART IX
OFFENCES AND PENALTIES

Fraudulent financing 92. Where a financing statement is lodged fraudulently, a person that lodges it willfully commits an offence and shall be liable to a fine of one hundred and fifty thousand penalty units.

Exemption from liability for actions or omissions 93. A person shall not be liable to 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 a want of reasonable care of diligence.

Falsification of entries in register 94. Any person who makes or causes to be made a false entry in the Register established under this Act, or issues a writing falsely purporting to be a copy of an entry in the Register, or who produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, commits an offence and shall be liable to imprisonment for a term not exceeding two years or a minimum fine of one hundred thousand penalty units or both.

Altering of 95. Any person who alters or defaces, makes any additions to or partly
documents removes, erases or obliterates any document issued by the Registrar commits an offence and shall be liable to imprisonment for a term not exceeding two years or a minimum fine of one hundred thousand penalty units or both.

Deceiving or influencing the Registrar or an officer

(1) Any person who-

(a) for the purpose of deceiving the Registrar or any other officer of the Collateral Registry Office in the execution of the provisions of this Act; or

(b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder;

(c) makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, commits an offence and shall be liable to imprisonment for a term not exceeding two years or a minimum fine of one hundred thousand penalty units or 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 omission of 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 shall be liable to imprisonment for a term not exceeding two years or a minimum fine of one hundred thousand penalty units or both.
General penalties 97. Save where otherwise provided in this Act, any person who commits an offence under this Act shall be liable to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

PART X

SUPERSEDED ACTS, CONFLICT OF LAWS AND TRANSITORY PROVISIONS

Superseded Acts

98. (1) The provisions of this Act supersedes the provisions of the Trade Charges Act, Agricultural Credits Act, Hire Purchase Act and the Sale of Goods Act of 1890 and any subsidiary legislation issued under these Acts that provided for security interest as defined in this Act.

(2) The principles of the common law, equity and the law merchant, except insofar as they are inconsistent with the provisions of this Act, supplement this Act and continue to apply.

Conflict of Laws

99. (1) The law applicable to the creation, perfection and priority of a security interest in tangible property when the tangible asset is located in Zambia is this Act. If the tangible asset is of a type ordinarily used in more than one country, this Act applies if the debtor is located in
The law applicable to the creation, perfection and priority of a security interest in intangible property when the debtor is located in Zambia is this Act.

The law applicable to the creation, perfection and priority of a security interest in a deposit account is this Act if the bank or financial institution that maintains the relevant deposit account has a place of business in Zambia.

The law applicable to the creation, perfection and priority of security interest in proceeds is the law applicable to the creation, perfection and priority of the security interest in the original collateral from which the proceeds arose.

The law applicable to issues relating to the enforcement of a security interest in tangible goods is the law of Zambia if enforcement takes place in Zambia.

The law applicable to issues relating to the enforcement of a security interest in intangible goods is the law of Zambia if the debtor is located in Zambia.

The law applicable to the mutual rights and obligations of the debtor and the secured party arising from their security agreement is the law chosen by the parties and, in the absence of a choice of law, by the law governing the security agreement.

The commencement of insolvency proceedings under the Insolvency Act does not displace the conflict of law provisions that determine the law applicable to the creation, perfection, priority and enforcement of a security interest.
(9) Avoidance of security interest, treatment of secured parties, ranking of claims and distribution of proceeds under the Insolvency Act if the insolvency proceeding commenced under the Insolvency Act shall not be displaced.

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

(11) For the purposes of this Act, the debtor is located in Zambia if it has a place of business in Zambia. If the debtor does not have a place of business, reference is to be made to the habitual residence of the debtor. The location of the property or of the debtor shall be determined, for creation purposes, at the time of the creation of the security interest and, for perfection and priority purposes, at the time the issue arises.

**Transitory Provisions**

When prior law governs

100. 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 security interests continue to be effective during transitional

101. (1) A prior security interest that was perfected or made effective against third parties under the prior law shall continue, during the transitional period, to be effective perfected under this Act.

(2) A prior security interest remains perfected or effective against third parties and is deemed to be perfected under this Act until the earlier of:
(a) the time it would have ceased to be perfected or effective against third parties under prior law; or

(b) the expiration of a period of 6 months after the effective date of this Act.

(3) If the 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 under subsection (2), the perfection is continuous.

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

(5) For purposes of this Part;

(a) “prior law” means any law whether statutory, equitable or common law under which a security interest, as defined in this Act was created before the commencement of this Act; and

(b) “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 that commencement date.

This Act governs priority conflicts

102. (1) This Act applies to priorities of competing security interests whether perfected under this Act or prior law.

(2) The priority of a prior security interest is calculated from the date that it was perfected or made effective against third parties under prior
(3) The priority of a security interest is determined by prior law if the security interest and any competing claims to the collateral arose before the effective date of this Act.

(4) During the transitional period, the priority between prior security interests and competing claims shall be determined by the prior law.